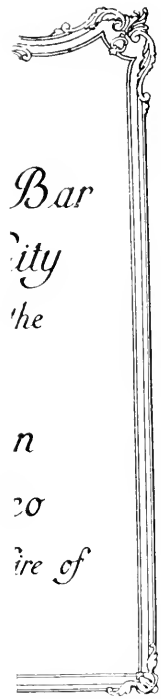

INTESTATE SUCCESSION

IN THE

STATE OF NEW YORK.

SHOWING THE RIGHTS OF THE LIVING TO THE PROPERTY OF DECEASED RELATIVES UNDISPOSED OF BY VALID WILL.

By DANIEL S. REMSEN.

OF THE NEW YORK BAR.

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NOTE TO FOURTH EDITION.

In the fourth edition it is intended to present the law of INTESTATE SUCCESSION as it is found in the statutes and the judicial decisions of this State at the present time, and to this end such changes in, and additions to, the work have been made as were necessary.

D. S. R.

69 Wall St., New York, Jan., 1904.

PREFACE TO FIRST EDITION.

The object of this volume is to present, in a form convenient for reference, a subject which it is impracticable for lawyers to carry wholly in mind, and yet of sufficient importance to require frequent examination, especially by those engaged to any extent with the estates of deceased persons. The material forming the basis of this work having been collected by the writer while engaged upon the subject of intestate succession and kindred branches of the law, and having also been found useful by him in drawing or construing wills, the work has been thought worth the labor of arranging in its present shape for publication.

It will be noticed that the plan of naming particular relatives, and then stating their rights to take or share in the property of deceased persons, under various family circumstances, has been pursued throughout. This arrangement will be found of practical service in readily ascertaining the rights of claimants and inquirers, and in showing what becomes of property not effectually disposed of by will.

It is believed that the Chart of Consanguinity, Table of Descent, and Table of Relative Terms, will be found useful in determining the relationship of claimants and inquirers.

For greater convenience, the Statutes of Descent and Distribution are appended.

DANIEL S. REMSEN.

69 Wall St., New York, Dec., 1885.

CONTENTS.

CHAPTER I.

OF THE PERSONS ENTITLED TO TAKE.

CHAPTER II.

OF THE PROPERTY TO BE DIVIDED.

CHAPTER III.

OF THE RIGHTS OF WIDOW AND HUSBAND.

CHAPTER IV.

OF THE RIGHTS OF DESCENDANTS.

CHAPTER V.

OF THE RIGHTS OF ANCESTORS.

CHAPTER VI.

OF THE RIGHTS OF BROTHERS AND SISTERS AND THEIR DESCENDANTS.

CHAPTER VII.

OF THE RIGHTS OF UNCLES AND AUNTS AND THEIR DESCENDANTS.

CHAPTER VIII.

OF THE RIGHTS OF GREAT-UNCLES AND AUNTS AND THEIR DESCENDANTS.

CHAPTER IX.

OF THE RIGHTS OF GREAT-GREAT-UNCLES AND AUNTS AND THEIR DESCENDANTS.

CHAPTER X.

OF THE POSSESSION AND ENJOYMENT OF THE PROPERTY TAKEN.

APPENDIX.

INTESTATE SUCCESSION
IN NEW YORK.

CHAPTER I.

OF THE PERSONS ENTITLED TO TAKE.

§ 1. **What law governs.**— Where a deceased person leaves property to be disposed of by the law regulating intestate estates, the succession depends on the character of the property, its location, and the domicile of the deceased. The intestate succession to real estate situated within this State is regulated by the laws of New York.[1] In the case of personal estate the succes-

[1] R. P. Law, §§ 280-296. Concerning the effect of the law of another State touching the status of a claimant as to le-

sion depends upon the law of the domicile of the deceased.[2] Hence, the following pages are applicable to real estate situated in the State of New York, and the personal estates of persons there domiciled.

§ 2. **Relatives generally.**— The right of living persons to take property of a person dying intestate depends on their relationship to the deceased. These relationships are of three kinds: first, those by affinity or marriage; second, those by consanguinity or blood, and third, those by lawful adoption. The only relatives of the first class who are entitled to take under the law of intestate succession are husband and wife.[3] All other relatives must found their claims to property on relationship by blood, or on the statute relating to the adoption of children.[4]

Lest there should be any confusion of terms, all relationships will be viewed from the position of the deceased, and not from the standpoint of the claimant or inquirer. Thus we will speak of a child, nephew, parent, or other relative *of the deceased.* By re-

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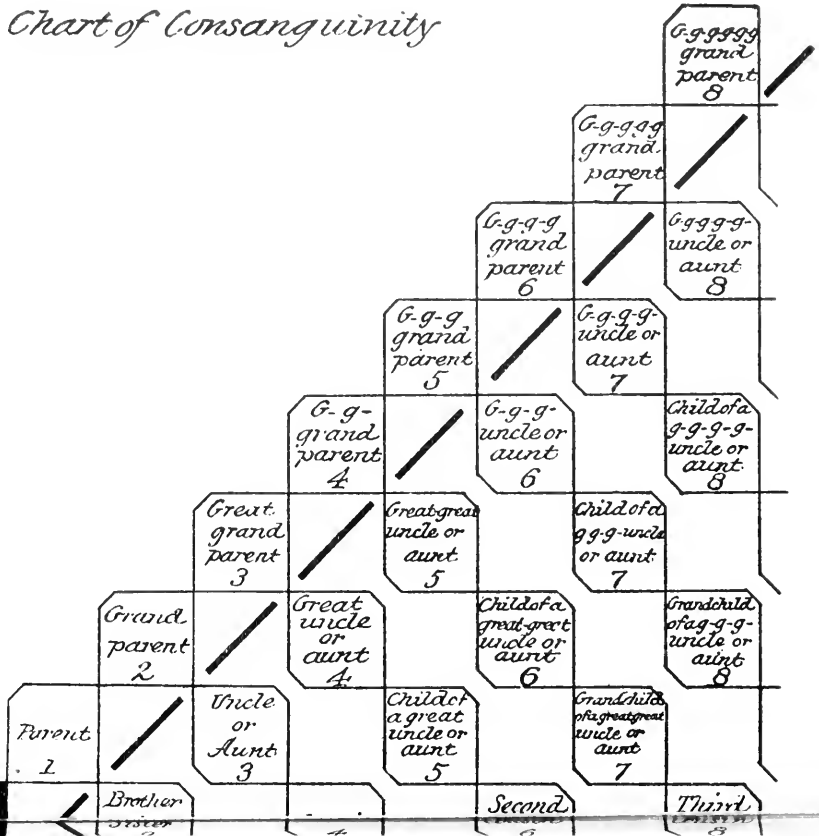
gitimacy, see Miller *v.* Miller, 91 N. Y. 315; rev'g 18 Hun, 507. As to civil death, see Avery *v.* Everett, 110 N. Y. 317.

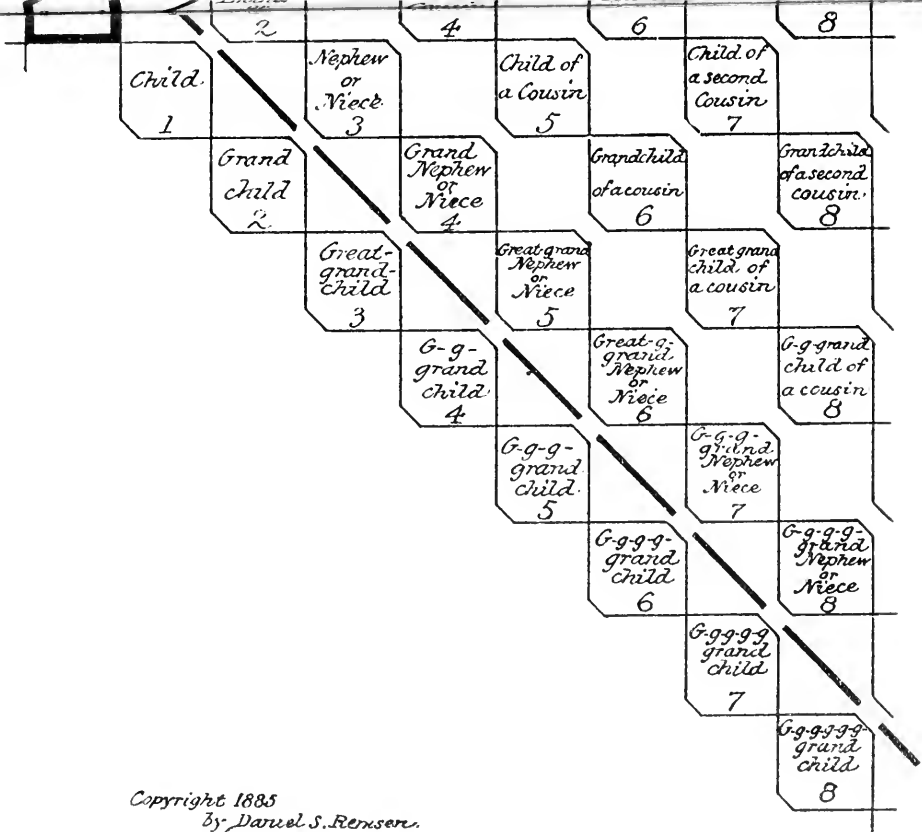
2 Public Administrator *v.* Hughes, 1 Bradf. 125; Bloomer *v.* Bloomer, 2 Id. 339; Graham *v.* Public Administrator, 4 Id. 127; Mercure's Estate, 1 Tuck. 288; Minor *v.* Jones, 2 Redf. 289.

3 Redf. Surr. Pr. 3d ed. 609.

4 See § 10 of this chapter.

Chart of Consanguinity





ferring to the Chart of Consanguinity here given it may be seen that persons in the same generation with the deceased bear to the deceased the same relationship that the deceased bears to them — as, for example, brother or sister to brother or sister, cousin to cousin, and the like. In other generations relationships are not reciprocal, and different terms are necessarily employed, as parent and child, uncle and nephew, and the like.

The accompanying chart affords a comprehensive view of all possible relationships within the eighth degree[5] of consanguinity. The horizontal lines show the generations. The numerals and perpendicular lines indicate the degree of consanguinity to the deceased. The relatives mentioned on the left of the heavy broken line are lineals. Those mentioned on the right of the same line are collaterals. The diagonal columns descending to the right indicate the collateral relatives, who are descendants of the ancestor named at the head of each column respectively.

§ 3. **The number of relatives.**—As will be seen by the following Table of Descent, the number of ancestors or relatives within any given degree in the ascending line, who must have existed, cannot exceed

[5] According to the rules of the civil law, 4 Burns' Eccl. Law, 303.

a fixed number, easily ascertained by geometrical progression: of parents, two; grandparents, four; great-grandparents, eight; great-great-grandparents, sixteen, etc. The number of ancestors, however, may have been lessened by intermarriage, whereby certain ancestors may have become common to both the paternal and maternal lines. For example, if the parents of the deceased were cousins, the deceased could have only six instead of eight great-grandparents, twelve instead of sixteen great-great-grandparents, etc.

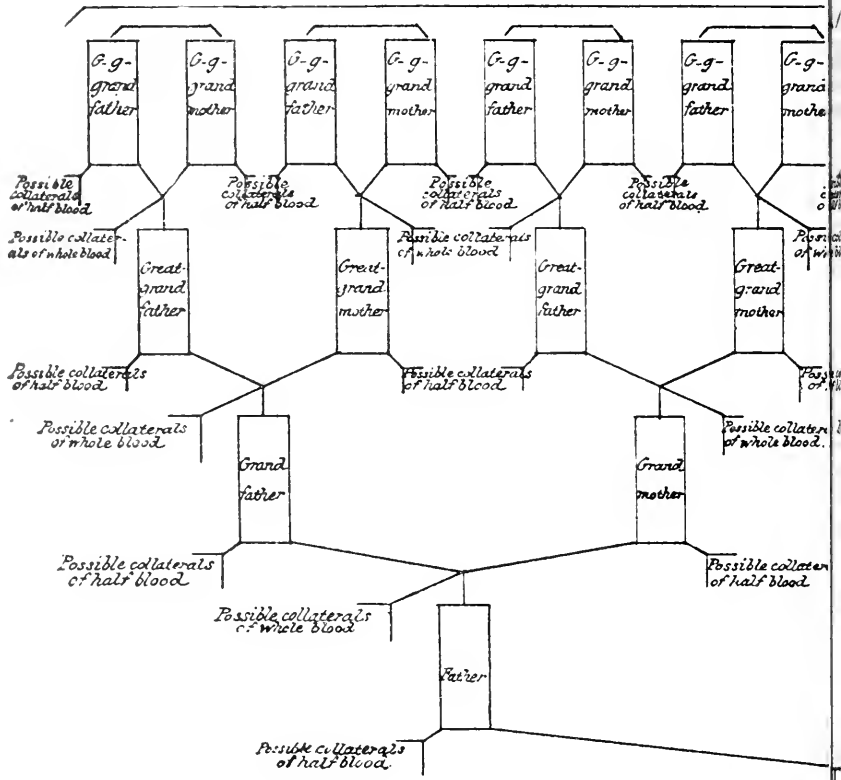
It should be remembered that each ancestor is a source from which collateral relations may have descended. In cases of succession, where collaterals are admitted, the tracing of collateral descendants from these sources becomes very important, and no source can be neglected without rendering the list of relatives obtained subject to error.

The task of tracing out collateral relationships may be increased by a second or other marriage of an ancestor with a person whose blood does not flow in the veins of the deceased, and thus a set of collateral relatives of the half-blood may be found.

The number of descendants or collateral kindred of any particular degree or designation is necessarily indefinite, and ascertainable only by inquiry. The necessity of a rigid inquiry in such cases, lest any should be omitted, cannot be over-estimated.

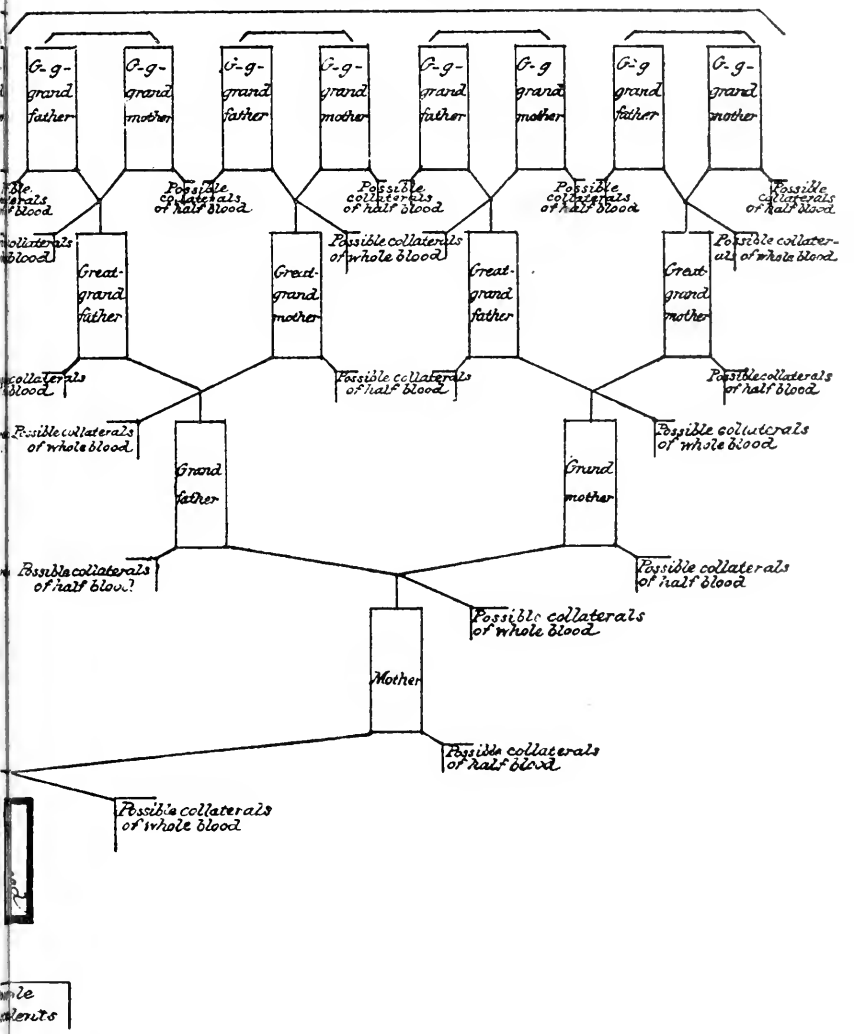
Table o

Paternal Line.



Descent.

Maternal Line.



§ 4. **Relative terms.**— The table of relative terms hereafter given is designed to aid in ascertaining the exact relationship of claimants or inquirers to a deceased kinsman where it is not already known. It will be noticed that the expression of each of the terms given implies the one written opposite. Where the relationship of the deceased to the claimant or inquirer is known, let such relationship be found in one column, and the relationship of the claimant or inquirer *to the deceased* will be found directly opposite. In like manner relationships may be traced from known ancestorial relationships. Thus this table will be found of service in connection with the preceding diagrams.

TABLE OF RELATIVE TERMS.

Matrimonial.

Husband.	Wife or widow.

Lineal.

Parent.	Child.
Grandparent.	Grandchild.
Great-grandparent.	Great-grandchild.
Great-great-grandparent.	Great-great-grandchild.

Etc.

Collateral.

Brother or sister.	Brother or sister.
Uncle or aunt.	Nephew or niece.

Great-uncle or aunt [a brother or sister of a grandparent].	Grandnephew or niece.
Great-great-uncle or aunt [a brother or sister of a great-grandparent].	Great-grandnephew or niece.
Etc.	
Cousin.	Cousin.
Child of a great-uncle or aunt [a cousin of a parent].	Child of a cousin [a cousin once removed].
Child of a great-great-uncle or aunt [a cousin of a grandparent].	Grandchild of a cousin [a cousin twice removed].
Etc.	
Second cousin.	Second cousin.
Grandchild of a great-great-uncle or aunt [a second cousin of a parent].	Child of a second cousin [a second cousin once removed].
Etc.	
Third cousin.	Third cousin.
Etc.	

§ 5. **Post-testamentary children.**— Where a child of a testator has been born after the making of a will,[6] either before or after the testator's death, and

[6] As to the effect of adopting a child, see Adopted Children, p. 18.

survives the testator, such child, if unprovided for by any settlement, and neither provided for nor in any way mentioned in such will, succeeds to the same portion of such parent's real and personal estate as he would have taken if such parent had died intestate.[7] And the devisees and legatees under the will are obliged to contribute ratably to that end.[8]

§ 6. **Posthumous relatives.**— Relatives of an intestate, begotten before his death, but born thereafter, take real and personal estate in the same cases and

[7] R. S. 65, § 49, as am'd by L. 1869, ch. 22: Smith *v.* Robertson, 24 Hun, 210, aff'd in 89 N. Y. 555. Prior to the amendment of 1869 this provision did not relate to a will of a married woman. Cotheal *v.* Cotheal, 40 N. Y. 405, overruling Plummer *v.* Murray, 51 Barb. 201. As to illegitimate child taking from mother in such case mentioned, but not decided in Matter of Bunce, 6 Dem. 278. For the rules for ascertaining the share of a post-testamentary child and assessing contributions from devisees and legatees to make up such share, see Mitchell *v.* Blaine, 5 Paige, 588; Sanford *v.* Sanford, 61 Barb. 296; McCormack *v.* McCormack, 50 How. Pr. 196; Sanford *v.* Sanford, 4 Hun, 753. It seems that gifts *causa mortis* should contribute. Bloomer *v.* Bloomer, 2 Bradf. 339; House *v.* Grant, 4 Lans. 296. Assessment of contributions to pay debts should bear equally on devisees and legatees as on the post-testamentary child's share. Rockwell *v.* Geery, 4 Hun, 606; s. c., 6 Supm. Ct. (T. & C.) 687.

[8] 2 R. S. 65, § 49, as am'd by L. 1869, ch. 22. See also cases above cited.

in the same manner as if they had been born in the lifetime of the intestate and had survived him.[9]

§ 7. **Relatives of the half-blood.**— Relatives of the half-blood take real and personal estate equally with those of the whole-blood in the same degree,[10] except where real estate came to the intestate by descent, devise or gift immediately and not mediately from some one of the intestate's ancestors.[11] In that event all those who are not of the blood of such ancestor are excluded from the inheritance.[12]

§ 8. **Illegitimate children.**— In default of lawful issue illegitimate children take real and personal property from their mother as if legitimate.[13]

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[9] R. P. Law, § 292; Code, § 2732, subd. 14; Mason *v.* Jones, 2 Barb. 229, 251; Drischler *v.* Van Den Henden, 49 Super. Ct. (J. & S.) 508.

[10] R. P. Law, § 290; Code, § 2732, subd. 13; Champlin *v.* Baldwin, 1 Paige, 562; Hallett *v.* Hare, 5 Paige, 316; Brown *v.* Burlingham, 5 Sandf. 418; Beebe *v.* Griffing, 14 N. Y. 235; Conkling *v.* Brown, 8 Abb. Pr. N. S. 345; s. c., 57 Barb. 265; Valentine *v.* Wetherill, 31 Barb. 655; and Adams *v.* Smith, 20 Abb. N. C. 60.

[11] The word "ancestor," as used in the statute, refers only to the immediate ancestor in estate, and not in blood. Wheeler *v.* Clutterbuck, 52 N. Y. 67; Valentine *v.* Wetherill, 31 Barb. 655; Emanuel *v.* Ennis, 48 Super. Ct. (J. & S.) 430; Dargin *v.* Wells, N. Y. Daily Reg., Aug. 9, 1883; Adams *v.* Smith, 20 Abb. N. C. 60.

[12] R. P. Law, § 290.

[13] R. P. Law, § 289; Code Civ. Pro., § 2732, as am'd L. 1897, ch. 37; Ferrie *v.* Public Administrator, 3 Bradf. 249.

§ 9. **Relatives of illegitimate intestates.**— In case of the intestacy of an illegitimate, the widow and descendants have as many rights as where the intestate is legitimate.[14] In the absence of descendants the mother takes all the real estate if she be living, and if she be dead it descends to the relatives of the intestate on the part of the mother, as if the intestate had been legitimate,[15] but subject to dower if the widow be living.[16] If the illegitimate intestate leaves no widow or descendant the mother takes all personal estate.[17] But the division of the personal estate in case the widow and mother of an illegitimate intestate both survive, does not appear to have been contemplated in framing the statute.[18] If the mother be

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For the status of legitimacy as affected by the laws of the claimant's domicile, see Miller *v.* Miller, 91 N. Y. 315, rev'g 18 Hun, 507, and overruling Bollerman *v.* Blake, 24 Hun, 187. An illegitimate grandchild cannot inherit from a maternal grandfather, the mother of the illegitimate being dead. Matter of Mericlo, 63 How. Pr. 62. The marriage of parents renders legitimate all children born out of wedlock. Domestic Rel. L. § 18.

14 R. P. Law, § 281; Code, § 2732.

15 R. P. Law, § 289. But if the mother be living and excluded by reason of alienage a brother of the deceased born in wedlock of the same parents cannot inherit. St. John *v.* Northrup, 23 Barb. 32.

16 R. P. Law, § 280.

17 Code, § 2732, subd. 9.

18 Ib.

dead the relatives of the deceased on the part of the mother take[19] personal estate as if the intestate had been legitimate, and to the exclusion of relatives on the part of the father.

§ 10. **Adopted children.**— By the statute regulating the adoption of children[20] it is provided that a "child takes the name of the foster parent. His rights of inheritance and succession from his natural parents remain unaffected by such adoption. The foster parent or parents and the minor sustain toward each other the legal relation of parent and child, and have all the rights, and are subject to all the duties of that relation, including the right of inheritance from each other, except as the same is affected by the provisions in this section in relation to adoption by a stepfather or stepmother, and such right of inheritance extends to the heirs and next of kin of the minor, and such heirs and next of kin shall be the same as if he were the legitimate child of the person adopting, but as

[19] Code, § 2732, subd. 9. Public Administrator *v.* Hughes, 1 Bradf. 125. See also Peters *v.* Public Administrator, Id. 200.

[20] Domestic Relations Law, § 64, as am'd L. 1897, ch. 408. The original act relating to adoption was L. 1873, ch. 830, § 10. The feature of inheritance was inserted by an amendment, L. 1887, ch. 703, which took effect June 25, 1887. Adoption under the statute prior to the amendment gives right to intestate succession. Simons *v.* Burrell, 8 Misc. 404; Dodin *v.* Dodin, 16 App. Div. 42. See note on adoption under statute, 29 Abb. N. C. 49.

respects the passing and limitation over of real or personal property dependent under the provisions of any instrument on the foster parent dying without heirs, the minor is not deemed the child of the foster parent so as to defeat the rights of remaindermen."

§ 11. **Aliens.**—At common law aliens cannot acquire real estate by descent.[21] The statutes of this State have, however, largely removed this common-law disability.[22]

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[21] 2 Kent Comm. 53, and cases cited.

[22] R. P. Law, §§ 4–7.

CHAPTER II.

OF THE PROPERTY TO BE DIVIDED.

§ 1. **Devisable property generally.**— Under the laws of the State of New York, all the property of a deceased person remaining after the payment of debts, funeral expenses, and the expenses of administration, which is not disposed of by a valid will, descends or is distributable to the relatives of the deceased in the proportions mentioned in the following chapters. Where the deceased leaves a will or supposed will, the property to be divided may be ascertained with some difficulty. A lost or fraudulently destroyed will, if properly established, has full effect. If a will appears to exist an investigation of the validity and effect of the supposed will is necessary to determine what, if any, property passes by intestate succession. Thus, although no treatise on the subject of

wills can be here undertaken, the following necessary inquiries will be indicated: (1) Did the deceased make a will? (2) Has that will been revoked in whole or in part? (3) Does the will, being properly made and not being revoked, fail to take effect wholly or in part?

As affecting the property to pass by intestate succession, another important inquiry necessarily arises in case the deceased leaves no valid will, or dies intestate as to personal estate only. It is: Did the deceased make advancements during his lifetime that should be brought into hotchpot? The subject of advancements will be reserved for one of the last sections of this chapter. The last section will be devoted to cases where real estate is said to have come to the deceased on the part of his father or mother.

§ 2. **Did the deceased make a will?** To determine what, if any, property passes by the laws of intestate succession, by reason of total or partial intestacy, it is necessary, among other things, to inquire: Did the deceased make a will? After a diligent search has been made, and what appears to be a last will and testament of the deceased is found, it must be determined, on behalf of the claimant or inquirer, whether or not the apparent will was properly made. As an aid in the pursuit of such inquiry, the following list of suggestions may be found useful:

May not the supposed will be a forgery?

Was it executed by the deceased while of unsound mind?

Was it the result of undue influence practiced on the deceased?

Was it the result of fraud?

Was it subscribed by the testator at the end thereof?

Was it subscribed by two witnesses at the end thereof?

Did the testator request each witness to subscribe as such?

Did the testator subscribe, or acknowledge his subscription, in the presence of each witness?

Did the testator declare to each witness, at the time of subscribing or acknowledging the subscription, that the instrument was his last will and testament?

If the will is a will of real estate was it made by a person twenty-one years of age or over?

If the will is a will of personal estate, and made by a male, was he of the age of eighteen years or upwards?

If the will is a will of personal estate, and made by a female, was she of the age of sixteen years or upwards?

If the will is nuncupative or unwritten, is it a will of personal property, and was it made by a

soldier while in actual military service, or a mariner while at sea?

§ 3. **Has the will been revoked?** — To determine what, if any, property passes by the laws of intestate succession by reason of total or partial intestacy, it is necessary, among other things, to inquire: Has the will of the deceased been revoked wholly or in part? To aid in this inquiry the following suggestions may be found useful:

(1) As to the revocation of a will as a whole. Was the will revoked —

By a subsequent will or writing executed with the same formalities as a will?

By the testator, in person, burning, tearing, cancelling, obliterating or destroying the will, with the intent and for the purpose of revoking the same?

By another person, in the testator's presence, by his direction and consent, doing like things with the like purpose of the testator, and can the direction and consent of the testator and the fact of such injury or destruction be proved by two witnesses?

By the subsequent marriage of a woman?

By the subsequent marriage of a man and the birth of issue before or after the testator's death, where the wife or issue survive, and the will disposes of the whole of the testator's estate, without pro-

vision being made for the issue by some settlement or in the will, and without mentioning the issue in the will in such a way as to show an intent not to make such provision?

(2) As to the revocation of parts of wills. Was the devise or bequest revoked —

By the testator divesting himself of the thing devised or bequeathed?

By the testator executing an instrument altering but not wholly divesting himself of his estate or interest in the property previously devised or bequeathed by him, wherein he declares that it shall operate as a revocation?

By the testator executing an instrument altering but not wholly divesting himself of his estate or interest in property previously devised or bequeathed by him, the provisions of which instrument are wholly inconsistent with the terms and nature of such previous devise or bequest, where such provisions in the instrument do not depend on a condition unperformed, or contingency which has not happened?

§ 4. **Does the will fail to take effect?** — To determine what, if any, property passes by the laws of intestate succession, by reason of total or partial intestacy, it is necessary, among other things, to inquire: Does the will, being properly made and not

being revoked, fail to take effect wholly or in part? To aid in this inquiry the following suggestions may be found useful:

Does the will fail wholly or in part by reason of—

Being void for uncertainty?

Illegally suspending the power of alienation?

Directing illegal accumulation of income?

Gifts being made to a subscribing witness whose testimony is necessary to prove the will?

Too large a portion of the estate being given to charitable, literary, etc., associations, where the testator leaves a husband, wife, child or parent?

Gifts being made to literary, etc., associations in a will not executed two months before the testator's death?

The death of a legatee or devisee before the death of the testator?

The gift being conditional and the condition having failed?

The legatee or devisee being a corporation which has not been expressly authorized by law to take under a will, or which has exceeded the limit allowed by law?

The subsequent birth of a child?

§ 5. **Advancements.**— Where a deceased[1] has given real or personal estate, or both, to a child, with a view

[1] Whether a man or woman. Kintz *v.* Friday, 4 Dem. 540.

to a portion or settlement in life, such a gift is deemed an advancement,[2] and in the cases hereafter mentioned must be taken into consideration on the division of estates.[3] If the deceased left no valid will, or if the deceased left a will which disposed of all his real estate, leaving only personal estate to pass by intestate succession, then, under the Revised Statutes, all advancements were required to be brought

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[2] Maintaining, educating, or money given without such intent is not an advancement. Code, § 2733. As to valueless property given, see Marsh *v.* Gilbert, 2 Redf. 465. An advancement is presumed from paying consideration and taking title in name of child. Piper *v.* Barse, 2 Redf. 19; Sanford *v.* Sanford, 61 Barb. 299; Proseus *v.* McIntyre, 5 Barb. 424, 432; Partridge *v.* Havens, 10 Paige, 618, 626; also from conveyance of land to child without consideration, although a consideration be recited. Sanford *v.* Sanford, 61 Barb. 299; also from gift of a considerable sum of money to start or be used in business. Ib.; M'Rae *v.* M'Rae, 3 Bradf. 199, 206. As to necessary evidence, see Hicks *v.* Gildersleeve, 4 Abb. Pr. 1; Bell *v.* Chaplain, 64 Barb. 396; De Caumont *v.* Bogert, 36 Hun, 382; aff'd *sub nom.* Matter of Morgan, 104 N. Y. 74; Alexander *v.* Alexander, 1 N. Y. St. R. 508. As to the history of advancements, see Terry *v.* Dayton, 31 Barb. 519. As to effect of a subsequent will, Clark *v.* Kingsley, 37 Hun, 246; Arnold *v.* Harann, 43 Hun, 278. By conveyance to wife of child. Palmer *v.* Culbertson, 143 N. Y. 213.

[3] If all is disposed of by a valid will there can be no question as to advancements. Hays *v.* Hibbard, 3 Redf. 28. As to the rights of post-testamentary children, see Sanford *v.* Sanford, 61 Barb. 298.

into hotchpot on the division of the estate.[4] But that was not the case if the deceased left a valid will which failed to dispose of all his real estate.[5] The present statutes have been somewhat modified in form.[6]

Where an advancement is brought into hotchpot, if it is equal to or greater than the amount or share which the child, who has been advanced, would be entitled to receive, considering the value of the property advanced as part of the devisable estate, then such child and its descendants are excluded from any share therein.[6] If the advancement be less, he or his descendants are entitled to receive only so much real and personal estate as shall be sufficient to make all

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[4] 1 R. S. 754, § 23, etc.; 2 Id. 97, § 76, etc. The first-mentioned law applies to advancements only in cases of total intestacy where the deceased leaves real estate to descend to his heirs. Thompson *v.* Carmichael, 3 Sandf. Ch. 120, 127; Hicks *v.* Gildersleeve, 4 Abb. Pr. 1; Kent *v.* Hopkins, 86 Hun, 611; Messman *v.* Egenberger, 46 App. Div. 46. The last-mentioned sections of the statutes apply alike to cases of total or partial intestacy where there is no real estate to descend to the heirs of the deceased. Thompson *v.* Carmichael, 3 Sandf. Ch. 120, 127; Hays *v.* Hibbard, 3 Redf. 28; Hicks *v.* Gildersleeve, 4 Abb. Pr. 1.

[5] Thompson *v.* Carmichael, 3 Sandf. Ch. 120, 127. It seems that lands without the State are not to be considered. M'Rae *v.* M'Rae, 3 Bradf. 199, 206.

[6] R. P. Law, § 295; Code, § 2733.

the shares of the children[7] as near equal as can be estimated.[8]

§ 6. **"On the part of" father or mother.**— Succession to real estate is made to depend in certain cases upon the fact of the inheritance having come to the deceased on the part of the father or on the part of the mother.[9] By the statute real estate is said to have come to the deceased, on the part of father or mother, as the case may be, where the inheritance came to the deceased by devise, gift or descent from the parent referred to, or from any relative of the blood of such parent.[10]

§ 7. **"From a deceased husband or wife."**— In certain unusual cases, where real or personal property

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7 Grandchildren representing children. Beebe *v.* Estabrook, 79 N. Y. 246, aff'g 11 Hun, 523.

8 R. P. Law, § 295; Code, § 2733. See also Sanford *v.* Sanford, 61 Barb. 298; Terry *v.* Dayton, 31 Barb. 519; Sanford *v.* Sanford, 4 Hun, 753.

9 R. P. Law, §§ 284, 288.

10 R. P. Law, § 280; Conkling *v.* Brown, 8 Abb. Pr. N. S. 345; s. c., 57 Barb. 265; Leary *v.* Leary, 50 How. Pr. 122; Wells *v.* Seeley, 47 Hun, 109. Not including purchases for value. Morris *v.* Ward, 36 N. Y. 587. The devise, gift or descent must be immediate. Hyatt *v.* Pugsley, 33 Barb. 373; s. p., s. c., 23 Id. 300; Valentine *v.* Wetherill, 31 Barb. 665; Adams *v.* Anderson, 23 Misc. 705; Righter *v.* Ludwig, 39 Misc. 416. See also Vanderheyden *v.* Crandall, 2 Denio, 9; Torrey *v.* Shaw, 3 Edw. Ch. 356.

comes to an intestate from a deceased husband or wife the heirs or next of kin of such husband or wife are entitled to take.[11] Real estate thus descends only where the intestate leaves no heirs nearer than great-uncles and great-aunts.. Personal property is thus taken only when the intestate leaves no husband, wife, descendant, or next of kin.

§ 8. **Succession tax.**—A tax of 5 per cent. is imposed on real and personal property of the value of $500, or over, passing to all relatives except descendants, father, mother, husband, wife, brother or sister. They pay 1 per cent. if the property passing equals or exceeds $10,000.[12]

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11 See Appendix A. and B. R. P. Law, § 290a: Code Civ. Pro. § 2732, subd. 16.

12 The Tax Law, §§ 220, 221.

CHAPTER III.

OF THE RIGHTS OF WIDOW AND HUSBAND.

§ 1. **Widow takes Real Estate.**— The widow[1] is entitled to dower in the real estate of which her husband was seized of an estate of inheritance, at any time during the continuance of the marriage relation,[2] unless she has voluntarily released her right or it has been otherwise destroyed.[3] This right may be lost in several ways, such as: by joining in a deed of con-

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[1] Foreign divorce for cruelty of husband does not bar dower. Starbuck *v.* Starbuck, 62 App. Div. 437.

[2] R. P. Law, § 170; Leach *v.* Leach, 21 Hun, 381; Durando *v.* Durando, 23 N. Y. 331. As to partnership property, see Dawson *v.* Parsons, 10 Misc. 428; Riddell *v.* Riddell, 85 Hun, 482.

[3] A woman, who has been divorced from her husband for his infidelity, does not lose her right to dower or to a distributive share of his personalty by remarriage in his lifetime. Van Voorhis *v.* Brintnall, 23 Hun, 260; rev'd on other grounds in 86 N. Y. 18. Dower may be released after divorce. L. 1892, ch. 616. Power of attorney may be given to release dower. L. 1893, ch. 599. No dower in estates in remainder. Clark *v.* Clark, 84 Hun, 362.

veyance;[4] accepting a pecuniary provision in lieu of dower;[5] the lands of her husband being taken by the right of eminent domain;[6] the foreclosure of a mortgage executed by the widow[7] as well as her husband, or given by the husband before marriage,[8] or to secure

[4] Elmendorf *v.* Lockwood, 57 N. Y. 322; aff'g 4 Lans. 393. As to a quit-claim to a stranger to the title, see Merchants' Bank *v.* Thompson, 55 N. Y. 7; Hammond *v.* Pennock, 61 N. Y. 145. See also Ford *v.* Knapp, 31 Hun, 522; Armstrong *v.* Armstrong, 1 N. Y. St. R. 529. Dower revived if deed defeated by sale under a fair judgment against husband. Kinchliffe *v.* Shea, 103 N. Y. 153.

[5] R. P. Law, § 288; Sanford *v.* Jackson, 10 Paige Ch. 266; Jones *v.* Fleming, 104 N. Y. 418. An election to accept provision in lieu of dower may be set aside if widow at time of election was ignorant of the extent of her dower right. Hindley *v.* Hindley, 29 Hun, 318. Effort to obtain information should be shown. Akin *v.* Kellogg, 48 Hun, 459. Such provision must be to take effect in possession or profit on the death of the husband. Crain *v.* Cavana, 36 Barb. 410. An agreement in articles of separation will not release dower unless the widow ratifies the agreement after her husband's death. Guidet *v.* Brown, 3 Abb. N. C. 295. As to effect of marriage settlements on rights of wife, see Pierce *v.* Pierce, 9 Hun, 50; aff'd in 71 N. Y. 154; Graham *v.* Graham, 67 Hun, 329. See as to ante-nuptial contract to take legacy, etc., Young *v.* Hicks, 92 N. Y. 235; aff'g Matter of Young, 27 Hun, 54.

[6] Code Civ. Pro. § 2348.

[7] Moore *v.* Mayor, etc., of N. Y., 8 N. Y. 110.

[8] Bank of Ogdensburgh *v.* Arnold, 5 Paige Ch. 38. As to what is a sufficient foreclosure, see Ocumpaugh *v.* Wing, 12 Week. Dig. 566.

purchase money;[9] and divorce for her own infidelity,[10] or by legal proceedings where the wife is an infant or incompetent to manage her affairs by reason of lunacy, idiocy or habitual drunkenness.[11]

A widow may tarry in the chief house[12] of her husband, forty days after his death, without being liable to any rent for the same, and in the meantime she shall have her reasonable sustenance out of the estate of her husband.[13]

§ 2. **Widow takes Personal Estate.**—If the deceased leaves any descendant the widow takes[14] one-third.[15]

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[9] Van Duyne *v.* Thayre, 14 Wend. 233; 19 Id. 162.

[10] R. P. Law, § 284.

[11] As to divorces granted in New York. Code Civ. Pro. § 1760. As to *valid* foreign divorces. Van Cleaf *v.* Burns, 118 N. Y. 549; 133 Id. 540. As to effect of annulling second marriage. Price *v.* Price, 124 N. Y. 589. As to what are not valid foreign divorces for this purpose. Rundle *v.* Inwegan, 9 Civ. Pro. R. (Browne) 328.

[12] The house must be owned by her husband. Voleckner *v.* Hudson, 1 Sandf. 215.

[13] R. P. Law, § 184. Between June 7, 1889, and April 23, 1890, in certain cases, widows might be entitled to an additional interest in lands. L. 1889, ch. 406; repealed law 1890, ch. 173.

[14] A widow by accepting a provision in lieu of dower is not thereby precluded from taking her distributive share of personal estate undisposed of by will. Edsall *v.* Waterbury, 2 Redf. 48; Hatch *v.* Bassett, 52 N. Y. 359; Lefevre *v.* Lefevre, 59 Id. 434.

[15] Code Civ. Pro. § 2732, subd. 1.

If the deceased leaves no descendant, but leaves a parent, the widow takes one-half.[16] If the deceased leaves no descendant or parent, but leaves a brother, sister, nephew, or niece, the widow takes, besides the one-half above referred to, all of the other half to the amount of, but not to exceed, two thousand dollars.[17] If the deceased leaves no descendant, parent, brother, sister, nephew, or niece, the widow takes all.[18]

A woman divorced in New York, for her own or her husband's infidelity, is not entitled to a distributive share as widow.[19] Where foreign divorces are valid and dissolve the marriage tie they seem to have the same effect.[20]

Where a man having a family shall die leaving a widow or a minor child or children, the widow, if there be any, during the time she shall live with and provide for such child or children, shall remain in possession of the following named property, if owned by her husband at the time of his death[21]: all spinning

16 Id., subds. 2, 6, 7.

17 Id., subd. 3; Doughty *v.* Stilwell, 1 Bradf. 300; Canfield *v.* Crandall, 4 Dem. 111, 120. See Parker *v.* Linden, 44 Hun, 515.

18 Code Civ. Pro. § 2732, subd. 3.

19 Code Civ. Pro. § 1760; Matter of Ensign, 103 N. Y. 284.

20 2 Bishop on Marriage and Divorce, §§ 705–714.

21 This provision for the family cannot be defeated by a testator. Vedder *v.* Saxton, 46 Barb. 188. As to effect of marriage settlement, see Young *v.* Hicks, 92 N. Y. 235; Code,

wheels, weaving looms, one knitting machine, one sewing machine, stoves put up or kept for use by the family, the family Bible, family pictures, school books used by or in the family, other books not exceeding in value fifty dollars which were kept and used as part of the family library; all sheep to the number of ten, with their fleeces, and the yarn and cloth manufactured from the same, one cow, two swine, and the pork of such swine, necessary food for such swine, sheep or cow for sixty days; all necessary provisions and fuel for the widow, child or children for sixty days; all necessary wearing apparel, beds, bedsteads and bedding; necessary cooking utensils; the clothing of the family, the clothes of the widow and her ornaments proper for her station; one table, six chairs, twelve knives and forks, twelve plates, twelve teacups and saucers, one sugar dish, one milk pot, one tea pot, twelve spoons, and also other household furniture which shall not exceed one hundred and fifty dollars in value[22] or that sum of money in lieu thereof.[23] She shall also remain in possession of other necessary household furniture, provisions, or other personal property in the discretion of the appraisers, to the value of not more than one hundred

§ 2713. An allowance made in lieu of articles. Matter of Williams, 31 App. Div. 617.

[22] Code Civ. Pro. § 2713: Lydecker *v.* Eisemann, 3 Dem. 72.

[23] Kelly *v.* Moore, 18 Abb. N. C. 468.

and fifty dollars.[24] An additional allowance in money may be made to the widow in the absence of other enumerated articles.[25] If she ceases so to do she may retain, as her own, her wearing apparel, her ornaments, one bed, bedstead and bedding for the same and the other property last above specified, and the other articles above mentioned shall then belong to such minor child or children. If she lives with and provides for such minor child or children until it or they become of full age all the articles and property above mentioned shall belong to the widow. If there be no minor child all the said articles and property shall belong to the widow.[26]

§ 3. **Husband takes Real Estate.**— The husband is entitled to curtesy in the real estate of which his wife died seized, and which is undisposed of by will, if issue of the marriage has been born alive,[27] and the

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[24] Sheldon *v.* Bliss, 8 N. Y. 31; Lydecker *v.* Eisemann, 3 Dem. 72.

[25] Matter of Williams, 31 App. Div. 617; Matter of Hembury, 37 Misc. 454; Matter of Hulse, 41 Misc. 307.

[26] Code Civ. Pro. § 2713. See p. 37, n. 33. See Bingham *v.* Brush, 33 Barb. 596.

[27] Leach *v.* Leach, 21 Hun, 381; Zimmerman *v.* Schoenfeldt, 3 Hun, 692; s. c., 6 Supm. Ct. (T. & C.) 141; Arrowsmith *v.* Arrowsmith, 8 Hun, 606; Graham *v.* Luddington, 19 Id. 246; Coit *v.* Grey, 25 Id. 444; Kirk *v.* Richardson, 32 Id. 434; Matter of Winne, 2 Lans. 21; Burke *v.* Valentine, 52 Barb. 412; s. c., 5 Abb. Pr. N. S. 164; aff'd Ct. of App. 1872, 6 Alb. L. J.

curtesy be not barred, as by a divorce for the infidelity of the husband.[28]

§ 4. **Husband takes Personal Estate.**— If the deceased leaves any descendant, the husband takes one-third.[29] If the deceased leaves no descendant, the husband takes all.[30]

167; Hatfield *v.* Sneden, 54 N. Y. 280; rev'g 42 Barb. 615. See *contra*, Billings *v.* Baker, 28 Barb. 343. As to seizin, see Gibbs *v.* Esty, 22 Hun, 266; Baker *v.* Oakwood, 49 Hun, 416; Bevins *v.* Riley, 24 Week. Dig. 35. As to the birth of the child, see Jackson *v.* Johnson, 5 Cow. 74, 95, 102; Marcellis *v.* Thalhimer, 2 Paige, 35.

[28] Renwick *v.* Renwick, 10 Paige Ch. 420; Code Civ. Pro. 1759. Valid foreign or domestic divorces, dissolving the marriage tie because of the misconduct of either husband or wife, would seem to have the same effect. 2 Bishop on Marriage and Divorce, § 712; Matter of Ensign, 103 N. Y. 284; Van Cleaf *v.* Burns, 133 N. Y. 540. As to what are valid foreign divorces, Rundle *v.* Inwigan, 9 Civ. Pro. R. 328.

[29] Code Civ. Pro. § 2734.

[30] Matter of Harvey, 3 Redf. 214 (said to have been aff'd by Genl. T. Supm. Ct.); Robins *v.* McClure, 100 N. Y. 328. That administration by the husband is necessary, Matter of O'Neil, 2 Redf. 544. See also Barns *v.* Underwood, 47 N. Y. 351; Ransom *v.* Nichols, 22 N. Y. 110; McCosker *v.* Golden, 1 Bradf. 64. The married woman's acts do not destroy a husband's common-law right to succeed to his wife's personal estate on her decease. They simply give the wife power to dispose of her estate which must be actually exercised to cut off the husband's right. Barnes *v.* Underwood, 47 N. Y. 351; Ransom *v.* Nichols, 22 N. Y. 110; Vallanee *v.* Busch, 8 Abb. Pr. 368; s. c., 28 Barb. 633; 17 How. Pr. 213; Lush *v.* Alburtis,

A valid foreign or domestic divorce, dissolving the marriage tie for the misconduct of the husband or wife, seems to take away the right of the husband as such to any personal estate.[31]

A husband is also entitled to have certain personal property, heretofore mentioned,[32] set apart for the use and benefit of himself or the minor children.[33]

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1 Bradf. 456; McCosker *v.* Golden, 1 Bradf. 64; Shumway *v.* Cooper, 16 Barb. 556. See also Robins *v.* McClure, 33 Hun, 368.

31 Code Civ. Pro. § 1759; Renwick *v.* Renwick, 10 Paige Ch. 420; 2 Bishop on Marriage and Divorce, §§ 705–714; Matter of Ensign, 103 N. Y. 284.

32 See Widow — Personal Estate, p. 32.

33 Code Civ. Pro. § 2713. The same articles and personal property as are set apart for the wife, *ante*, p. 33.

CHAPTER IV.

OF THE RIGHTS OF DESCENDANTS.

§ 1. **Children[1] take Real Estate.**— If the deceased leaves a widow, the children inherit real estate subject to her rights.[2] If the deceased leaves a husband, to whom a child has been born alive, the real estate is taken subject to his right of curtesy.[3]

Subject to the rights of the husband or widow above mentioned, the children inherit all the real estate in equal portions,[4] deceased children, who have descendants living, being counted for the purpose of division as themselves living.[5]

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1 If there is any adopted child see Adopted Children, p. 18.

2 The rights of a widow to real estate may be barred or they may exceed dower. See Widow, p. 30, § 1.

3 See Husband, p. 35.

4 As tenants in common. R. P. Law, § 293; Cole *v.* Irvine, 6 Hill, 634, 638.

5 R. P. Law, §§ 281–283.

§ 2. **Children[6] take Personal Estate.**— If the deceased leaves a widow[7] or husband[8] the children take two-thirds in equal portions; otherwise all, in the same manner; deceased children, who have descendants living, being counted for the purpose of division as themselves living.[9]

Minor children are also entitled, with or without the widow or husband, to have certain personal property, heretofore mentioned,[10] set apart for their use and benefit.

§ 3. **Grandchildren take Real Estate.**— Grandchildren inherit no portion of the real estate of a deceased if their parent (being a child of the deceased) be living.[11] If the deceased leaves a widow the real estate is taken subject to her rights.[12] If the deceased leaves a husband, to whom a child was born alive, the real estate is taken subject to his right of curtesy.[13]

Subject to the rights of the husband or widow

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[6] If there is any adopted child see Adopted Children, p. 18.

[7] Code Civ. Pro. § 2732.

[8] Code Civ. Pro. § 2734.

[9] Code Civ. Pro. § 2732, subds. 1, 4; § 2734.

[10] For a practical enumeration of the articles and the rights of the minors, see Widow — Personal Estate, p. 32. See also Husband — Personal Estate, p. 37, n. 33; Code Civ. Pro. § 2713.

[11] R. P. Law, §§ 281–283.

[12] The rights of a widow to real estate may be barred or they may exceed dower. See Widow, p. 30, § 1.

[13] See Husband, p. 35.

above mentioned, grandchildren inherit real estate as follows:[14]

(1.) If the deceased leaves no surviving child, grandchildren inherit all the real estate in equal portions, deceased grandchildren, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves one or more surviving children, grandchildren, who are children of a deceased child, take in equal portions the share their parent (a child of the deceased) would have taken if living; which would be such portion as would come to their parent (a child of the deceased) upon the equal division of the same among the children, deceased children, who have descendants living, being counted for the purpose of division as themselves living.

§ 4. **Grandchildren take Personal Estate.**— Grandchildren take no portion of the personal estate of a deceased if their parent (being a child of the deceased) be living.[15]

Where grandchildren are not thus excluded they take or share in two-thirds of the personal estate,

[14] R. P. Law. §§ 281–283.

[15] Code Civ. Pro. § 2732. subd. 1. 4. 10, 11; § 2734.

if the deceased leaves a widow or husband; otherwise they take or share in all, as follows:[16]

(1.) If the deceased leaves no child, grandchildren take in equal portions, deceased grandchildren, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves one or more children, the grandchildren, who are children of a deceased child, take in equal portions[17] the share their parent (a child of the deceased) would have taken if living; which would be such portion as would have come to their parent upon the equal division of all or two-thirds, as the case may be, among the children of the deceased, deceased children, who have descendants living, being counted for the purpose of division as themselves living.[18]

§ 5. **Great-grandchildren take Real Estate.**— Great-grandchildren inherit no portion of the real estate of a deceased if their parent (being a grandchild of the deceased) or grandparent (being a child of the de-

[16] Code, § 2732. See also Widow, p. 32, and Husband, p. 36.

[17] Deceased grandchildren, who have descendants living, being counted for the purpose of division as themselves living.

[18] See also § 2 of this chapter.

ceased) be living.[19] If the deceased leaves a widow the real estate is taken subject to her rights.[20] If the deceased leaves a husband to whom a child was born alive, the real estate is taken subject to his right of curtesy.[21]

Subject to the rights of the husband or widow, above mentioned, great-grandchildren inherit real estate as follows:[22]

(1.) If the deceased leaves no surviving child or grandchild, great-grandchildren inherit in equal portions, deceased great-grandchildren who have descendants living being counted for the purpose of division as themselves living.

(2.) If the deceased leaves no child, but leaves one or more surviving grandchildren, the great-grandchildren, who are children of a deceased grandchild, take in equal portions[23] the share their parent (being a grandchild of the deceased) would have taken if living; which would

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19 R. P. Law, §§ 281–283.

20 The rights of a widow to real estate may be barred or they may exceed dower. See Widow, p. 30, § 1.

21 See Husband, p. 35.

22 R. P. Law, §§ 281–283.

23 Deceased great-grandchildren, who have descendants living, being counted for the purpose of division as themselves living.

be such portion of the real estate as would come to their parent upon the equal division of the same among the grandchildren of the deceased, deceased grandchildren, who have descendants living, being counted for the purpose of division as themselves living.

(3.) If the deceased leaves one or more surviving children, the great-grandchildren, who are not excluded by living ancestors as above, take or share in, by representation, only that portion of the real estate which their grandparent (being a child of the deceased) would have taken if living; which would be such portion of the real estate as would come to their grandparent upon the equal division of the same among the children of the deceased, deceased children, who have descendants living, being counted for the purpose of division as themselves living.

§ 6. **Great-grandchildren take Personal Estate.**— Great-grandchildren take no portion of the personal estate of a deceased if their parent (being a grandchild of the deceased) or grandparent (being a child of the deceased) be living.[24]

Where great-grandchildren are not excluded, as above, they take or share in two-thirds of the per-

[24] Code Civ. Pro. § 2732, subds. 1, 4, 10, 11; § 2734.

sonal estate, if the deceased leaves a widow or husband,; otherwise they take or share in all, as follows:[25]

(1.) If the deceased leaves no child or grandchild, great-grandchildren take in equal portions, deceased great-grandchildren, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves no child, but leaves one or more grandchildren, the great-grandchildren, who are children of a deceased grandchild, take in equal portions[26] the share their parent (a grandchild of the deceased) would have taken if living; which would be such portion of the personal estate as would have come to their parent upon the equal division of all or two-thirds, as the case may be, among the grandchildren of the deceased, deceased grandchildren, who have descendants living, being counted for the purpose of division as themselves living.[27]

(3.) If the deceased leaves one or more children, great-grandchildren, who are not excluded by a

[25] Id. See also Widow, p. 32, and Husband, p. 36.

[26] Deceased great-grandchildren, who have descendants living, being counted for the purpose of division as themselves living.

[27] See also p. 40, § 4, subd. 1.

living ancestor as above, take or share in by representation that portion which their grandparent (a child of the deceased) would have taken if living; which would be such portion of the personal estate as would have come to their grandparent upon the equal division of all or two-thirds, as the case may be, among the children of the deceased, deceased children, who have descendants living, being counted for the purpose of division as themselves living.[28]

§ 7. **Great-great-grandchildren take Real Estate.**— Great-great-grandchildren inherit no portion of the real estate of a deceased if their parent (being a great-grandchild of the deceased), grandparent (being a grandchild of the deceased), or great-grandparent (being a child of the deceased) be living.[29]

If the deceased leaves a widow the real estate is taken subject to her rights.[30] If the deceased leaves a husband to whom a child was born alive the real estate is taken subject to his right of curtesy.[31]

Subject to the rights of the husband or widow above mentioned, great-great-grandchildren inherit real estate, as follows:[32]

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28 See also p. 39, § 2.

29 R. P. Law, §§ 281–283.

30 See Widow, p. 30, § 1.

31 See Husband, p. 35, § 3.

32 R. P. Law, §§ 281–283.

(1.) If the deceased leaves no surviving child, grandchild or great-grandchild, the great-great-grandchildren inherit in equal portions, deceased great-great-grandchildren, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves no surviving child or grandchild, but leaves one or more great-grandchildren, the great-great-grandchildren, who are children of a deceased great-grandchild, take in equal portions[33] the share their parent (being a great-grandchild of the deceased) would have taken if living; which would be such a portion of the real estate as would come to their parent upon the equal division of the same among the great-grandchildren of the deceased, great-grandchildren, who have descendants living, being counted for the purpose of division as themselves living.[34]

(3.) If the deceased leaves no surviving child, but leaves one or more grandchildren, the great-great-grandchildren, who are not excluded by a living ancestor as above, take or share in, by

[33] Deceased great-great-grandchildren, who have descendants living, being counted for the purpose of division as themselves living.

[34] See also p. 41, § 5.

representation, only that portion of the real estate which their grandparent (a grandchild of the deceased) would have taken if living; which would be such portion as would come to their grandparent upon the equal division of the same among the grandchildren of the deceased, deceased grandchildren, who have descendants living, being counted for the purpose of division as themselves living.[35]

(4.) If the deceased leaves one or more surviving children, the great-great-grandchildren, who are not excluded by a living ancestor as above, take or share in, by representation, only that portion of the real estate which their great-grandparent (a child of the deceased) would have taken if living; which would be such portion of the real estate as would come to their great-grandparent upon the equal division of the same among the children of the deceased, deceased children, who have descendants living, being counted for the purpose of division as themselves living.[36]

§ 8. **Great-great-grandchildren take Personal Estate.**— Great-great-grandchildren take no portion of the personal estate of a deceased if their parent (being a great-grandchild of the deceased), grandparent

[35] See also p. 39, § 3.

[36] See also p. 38, § 1.

(being a grandchild of the deceased), or great-grandparent (being a child of the deceased) be living.[37]

Where great-great-grandchildren are not excluded, as above, they take or share in two-thirds of the personal estate, if the deceased leaves a widow or husband, otherwise they take or share in all, as follows:[38]

(1.) If the deceased leaves no child, grandchild, or great-grandchild, the great-great-grandchildren take in equal portions, deceased great-great-grandchildren, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves no child or grandchild, but leaves one or more great-grandchildren, great-great-grandchildren, who are children of a deceased great-grandchild, take in equal portions[39] the share their parent (a great-grandchild of the deceased) would have taken if living; which would be such portion of the personal estate as would have come to their parent upon the equal division of all or two-thirds, as the case may be, among the great-grandchildren

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37 Code Civ. Pro. § 2732, subds. 1, 4, 10, 11; § 2734.

38 Id. See Widow, p. 32, § 2, and Husband, p. 36, § 4.

39 Deceased great-great-grandchildren, who have descendants living, being counted for the purpose of division as themselves living.

of the deceased, deceased great-grandchildren, who have descendants living, being counted for the purpose of division as themselves living.[40]

(3.) If the deceased leaves no child, but leaves one or more grandchildren, the great-great-grandchildren, who are not excluded by a living ancestor as above indicated, take or share in, by representation, that portion which their grandparent (a grandchild of the deceased) would have taken if living; which would be such portion of the personal estate as would have come to their grandparent upon the equal division of all or two-thirds, as the case may be, among the grandchildren of the deceased, deceased grandchildren, who have descendants living, being counted for the purpose of division as themselves living.[41]

(4.) If the deceased leaves one or more children, the great-great-grandchildren, who are not excluded by a living ancestor as above indicated, take or share in, by representation, that portion which their great-grandparent (a child of the deceased) would have taken if living; which would be such portion of the personal estate

40 See also p. 43, § 6, subd. 1.

41 See also p. 40, § 4, subd. 1.

as would have come to their great-grandparent upon the equal division of all or two-thirds, as the case may be, among the children of the deceased, deceased children, who have descendants living, being counted for the purpose of division as themselves living.[42]

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[42] See also p. 39, § 2.

CHAPTER V.

OF THE RIGHTS OF ANCESTORS.

§ 1. **Father takes Real Estate.**— If the deceased leaves a widow, the real estate is taken subject to her rights.[1] If the deceased leaves a husband to whom a child was born alive, the real estate is taken subject to his right of curtesy.[2]

If a son dies without a lawful descendant, the father inherits all the real estate except that which may have come to the deceased on the part of his mother.[3] If a daughter dies leaving neither a lawful descendant nor an illegitimate child, the father inherits in like manner.[4]

Where real estate came to the deceased on the part

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[1] For the rights of a widow see Widow, p. 30, § 1.

[2] See Husband, p. 35, § 3.

[3] R. P. Law, § 284. As to what property is said to have come to the deceased on the part of the mother, see *ante*, p. 28.

[4] R. P. Law, § 284.

of a deceased mother,[5] the father takes all for life if the deceased leaves any brother or sister, or descendant of either;[6] otherwise he takes all in fee.[7]

§ 2. **Father takes Personal Estate.**—A father takes no portion of the personal estate of a deceased child if such deceased leaves any descendant or husband.[8] Where the father is not thus excluded, he takes one-half if there be a widow; otherwise all.[9]

§ 3. **Mother takes Real Estate.**— If the deceased leaves a widow, the real estate is taken subject to her rights.[10] If the deceased leaves a husband, to whom a child was born alive, the real estate is taken subject to his right of curtesy.[11]

A mother inherits no portion of the real estate of a deceased son where such deceased leaves any lawful descendants.[12] She likewise inherits no portion of the real estate of a deceased daughter where such deceased leaves any lawful descendant or illegitimate child.[13]

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[5] As to when property is said to have come to a deceased on the part of father or mother, see p. 28.

[6] Morris *v.* Ward, 36 N. Y. 587.

[7] R. P. Law, § 284.

[8] See authorities cited under Husband, p. 35.

[9] Code, § 2732, subd. 7; Haring *v.* Coles, 2 Bradf. 349.

[10] For the rights of a widow, see Widow, p. 30, § 1.

[11] See Husband, p. 35.

[12] R. P. Law, § 285.

[13] R. P. Law, § 285.

If the father is living, the mother inherits no portion of the real estate, unless the inheritance came to the deceased on the part of the mother,[14] or the father is incapable of inheriting, as by reason of alienage or the like.[15]

If the inheritance came to the deceased on the part of the mother, or if the father be dead, or if living is incapable of inheriting, the mother takes a life estate if the deceased leaves a brother or sister, or descendant of either; otherwise she takes all in fee.[16]

§ 4. **Mother takes Personal Estate.**—A mother takes no portion of the personal estate of a deceased child where such deceased leaves any descendant,[17] husband,[18] or father.[19] Where the mother is not ex-

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[14] As to what property is said to have come to the deceased on the part of the mother, see p. 28.

[15] R. P. Law, §§ 284, 285.

[16] R. P. Law, § 285; Miller *v.* Macomb, 26 Wend. 230; Tilton *v.* Vail, 17 Civ. Pro. R. 194. The same is true where the deceased leaves brothers and sisters of the half-blood, not of the blood of the ancestor from whom the inheritance came to the deceased. Conkling *v.* Brown, 8 Abb. Pr. N. S. 345; s. c., 57 Barb. 265.

[17] Code Civ. Pro. § 2732, subds. 7, 8.

[18] Id.; Vallance *v.* Bausch, 8 Abb. Pr. 368; s. c., 28 Barb. 633; 17 How. Pr. 243. Approved in Ransom *v.* Nichols, 22 N. Y. 113, and see Husband, p. 36.

[19] Code Civ. Pro. § 2732, subds. 7, 8.

cluded as above, she takes or shares in the personal estate of the deceased as follows:[20]

(1.) If the deceased leaves a widow, one-half of the personal estate is distributable in equal shares to the mother, and brothers and sisters,* the representatives[21] of deceased brothers or sisters taking the share their parent would have taken if living.

(2.) If the deceased leaves no widow, the whole is distributable in the same manner.

(3.) If the deceased leaves no brother, sister, or descendant of a brother or sister,[22] the mother takes one-half if the deceased leaves a widow; otherwise all.

(4.) If the deceased was an illegitimate and leaves no widow, the mother takes all.[23]

§ 5. **Grandparents take Personal Estate only.**—Grandparents are incapable of inheriting real estate.[24]

Grandparents take no portion of the personal estate of a deceased, if such deceased leaves any de-

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20 Code Civ. Pro. § 2732, subds. 6, 8.

* Matter of Cruger, 68 N. Y. St. R. 241; 34 N. Y. Supp. 191.

21 Code, § 2732, subd. 5; Doughty *v.* Stilwell, 1 Bradf. 300.

22 Id., subd. 5.

23 Code Civ. Pro. § 2732, subd. 9. See also *ante*, p. 17.

24 2 Bl. Com. 208; R. P. Law, § 291.

To face page 54 Remsen on Intestate Succession, 4th Edition.

Grandparents take Real Estate.— By an Act (L. 1904. ch. 106) which was passed and took effect after this book was printed, March 22, 1904, a new subdivision was added to § 288 of Real Property Law, whereby grandparents are now enabled to inherit real estate. That subdivision reads as follows:

§ 288, subd. "5. If there be no such brothers or sisters of such father or mother, nor any descendants of such brothers or sisters, the inheritance, if it shall have come to the intestate on the part of his father, shall descend to his father's parents, then living, in equal parts, and if they be dead, then to his mother's parents, then living, in equal parts; but if the inheritance shall have come to the intestate on the part of his mother, it shall descend to his mother's parents, then living, in equal parts, and if they be dead, to his father's parents, then living, in equal parts. If the inheritance has not come to the intestate on the part of either father or mother, it shall descend to his living grandparents in equal parts."

By the foregoing amendment a living grandparent excludes great-uncles and aunts, children of great-uncles and aunts, second cousins, children of second cousins, great-great uncles and aunts, children of great-great uncles and aunts, grandchildren of great-great uncles and aunts and third cousins.

scendant,[25] husband,[26] widow,[27] parent,[28] brother, sister,[29] or descendant of a brother or sister.[30]

Where the grandparents are not excluded as above, they take all in equal portions.[31]

§ 6. **Great-grandparents take Personal Estate only.** — Great-grandparents are incapable of inheriting real estate.[32]

Great-grandparents take no portion of the personal estate of a deceased, if such deceased leaves any descendant, husband, widow, parent, grandparent, brother, sister,[33] or descendant of brother or sister.[34]

Where great-grandparents are not excluded, as above, they take or share all the personal estate of the deceased, in equal portions *per capita,* with such uncles and aunts as may be living,[35] deceased uncles

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25 Code Civ. Pro. § 2732, subds. 1–5.

26 See authorities in notes under Husband takes Personal Estate, p. 36.

27 Code Civ. Pro. § 2732, subd. 3.

28 Code Civ. Pro. § 2732, subds. 7, 8.

29 It has been decided that brothers and sisters take to the exclusion of grandparents. Matter of Marsh, 5 Misc. 428.

30 Code Civ. Pro. § 2732, subd. 5.

31 Bogert *v.* Furman, 10 Paige Ch. 496; Sweezey *v.* Willis, 1 Bradf. 495; Hurtin *v.* Proal, 3 Bradf. 414; Hill *v.* Nye, 17 Hun, 457.

32 2 Bl. Com. 208; R. P. Law, § 291.

33 See notes under head of the various relatives named.

34 Code Civ. Pro. § 2732, subds. 5, 10, 12.

35 Code Civ. Pro. § 2732, subds. 5, 10, 12.

and aunts who have descendants living, being counted for the purpose of division as themselves living.[36]

§ 7. **Great-great-grandparents take Personal Estate only.**— Great-great-grandparents are incapable of inheriting real estate.[37]

Great-great-grandparents take no portion of the personal estate of a deceased, if such deceased leaves any descendant, husband, widow, parent, grandparent, great-grandparent, brother, sister, descendant of a brother or sister, uncle, aunt,[38] or descendant of uncle or aunt.[39]

Where great-great-grandparents are not excluded as above, they take or share all the personal estate of the deceased, in equal portions *per capita*, with such great uncles, great aunts of the deceased as may be living, deceased great uncles and great aunts who have descendants living being counted for the purpose of division as themselves living.[40]

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36 Id.

37 2 Bl. Com. 208; R. P. Law, § 291.

38 See notes under the head of the varioous relatives named.

39 Code Civ. Pro. § 2732, subds. 5, 10, 12.

40 Id.

CHAPTER VI.

OF THE RIGHTS OF BROTHERS AND SISTERS AND THEIR DESCENDANTS.

§ 1. **Brothers and Sisters take Real Estate.**— Brothers and sisters[1] inherit no portion of the real estate of the deceased, where such deceased leaves any descendant.[2] Neither can they inherit where the deceased leaves a father: except (1st) where the inheritance came to the deceased on the part of his mother, or (2d) when the father is incapable of inheriting, as from alienage or the like.[3] In the first case, if the mother be dead, the brothers and sisters inherit subject to the life estate of the father.[4] In either case, if the mother be living, they inherit subject to her life estate.[5] In all cases, if the father be dead and the

1 In case of half-blood, see *ante*, p. 16.

2 R. P. Law, §§ 281–284.

3 R. P. Law, §§ 284, 285.

4 R. P. Law, §§ 284, 288; Morris *v.* Ward, 36 N. Y. 587.

5 R. P. Law, § 285.

mother be living, brothers and sisters take subject to her life estate.[6] If the deceased leaves a widow, the real estate is taken subject to her rights.[7] If the deceased leaves a husband, to whom a child was born alive, the real estate is taken subject to his right of curtesy.[8]

Where brothers and sisters are not excluded from the inheritance, as above, they[9] take all the real estate[10] (perhaps subject to a life estate above mentioned) in equal portions, deceased brothers and sisters who have descendants living being counted for the purpose of division as themselves living.[11]

§ 2. **Brothers and Sisters take Personal Estate.**— Brothers and sisters take no portion of the personal

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6 Id.; Barber *v.* Brundage, 169 N. Y. 368.

7 For the rights of a widow see Widow, p. 30, § 1.

8 See Husband, p. 35.

9 Whether brothers and sisters of the whole or half-blood, but if the inheritance came to the deceased on the part of either father or mother, the half blood is excluded, except it be that of the ancestor on the part of whom the estate came to the intestate. R. P. Law, § 290. See also *ante*, p. 16.

10 The common-law rule of inheritance, directly from a brother or sister — not through the father — is confirmed by R. P. Law, §§ 286, 287, which provide for descent between brothers and sisters if there be no parent "capable of inheriting." Luhrs *v.* Eimer, 80 N. Y. 171; aff'g 15 Hun, 399; S. P., Smith *v.* Mulligan, 11 Abb. Pr. N. S. 438.

11 R. P. Law, §§ 286, 287.

estate of a deceased, if the deceased leaves any descendant,[12] husband,[13] or father.[14]

Where brothers and sisters are not excluded, as above, they take or share in the personal estate of the deceased as follows:

(1.) If the deceased leaves a widow and mother, one-half is distributable in equal shares to the mother and brothers and sisters; the representatives[15] of deceased brothers and sisters taking the share their parent would have taken if living.[16]

(2.) If the deceased leaves a mother and no widow, all is distributable in like manner.[17]

(3.) If the deceased leaves a widow but no mother, all that may remain of one-half, after deducting two thousand dollars, is distributable in equal shares to the brothers and sisters; the represen-

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12 Code Civ. Pro. § 2732, subd. 1, 4.

13 Fry *v.* Smith, 10 Abb. N. C. 224; distinguishing Kearney *v.* Missionary Soc. of St. Paul, Id. 274. See Husband, *ante*, p. 36, § 4.

14 Harring *v.* Coles, 2 Bradf. 349; Code, § 2732, subd. 7.

15 Code Civ. Pro. § 2732, subd. 5; Matter of Davenport, 172 N. Y. 454.

16 Id. subd. 6.

17 Id. subd. 6.

tatives [18] of deceased brothers and sisters taking the share their parent would have taken if living.[19]

(4.) If the deceased leaves no widow or mother, all is distributable in the same manner.[20]

§ 3. **Nephews and Nieces take Real Estate.**— Nephews and nieces take no portion of the real estate of a deceased, where such deceased leaves any descendant.* Neither can nephews and nieces inherit if their parent (being a brother or sister of the deceased) be living.[21] Neither can they inherit if the deceased leaves a father; except (1st) where the inheritance came to the deceased on the part of the mother; or (2) where the father is incapable of inheriting, as from alienage or the like.[22] In the first case, if the mother be dead, nephews and nieces, who are not excluded as above, inherit subject to the life estate of the father.[23] In either case, if the mother be living, they, if not excluded as above, inherit sub-

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18 Code Civ. Pro. § 2732, subd. 5; Matter of Davenport, 172 N. Y. 454.

19 Code Civ. Pro. § 2732, subds. 3, 5.

20 Code Civ. Pro. § 2732, subd. 5; Matter of Marsh, (Surr. Ct. Cattaraugus Co.) 5 Misc. 428.

* R. P. Law, §§ 281, 282.

21 Id. §§ 286, 287.

22 R. P. Law, §§ 284, 285.

23 Id. § 284.

ject to her life estate.[24] In all cases, if the father be dead and the mother be living, nephews and nieces, who are not excluded as above, inherit subject to her life estate.[25] If the deceased leaves a widow, the real estate is taken subject to her rights.[26] If the deceased leaves a husband to whom a child was born alive, the real estate is taken subject to the husband's right of curtesy.[27]

Where nephews and nieces are not excluded from the inheritance as above, they inherit as follows:[28]

(1.) If the deceased leaves no brother or sister, the nephews and nieces take all the real estate (perhaps subject to a life estate above mentioned) in equal portions,[29] deceased nephews and nieces, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves a brother or sister, the nephews and nieces, who are children of a deceased brother or sister, take in equal portions[30]

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24 Id. § 285.

25 Id. § 285.

26 For the rights of a widow see Widow, p. 30, § 1.

27 See Husband, p. 35.

28 R. P. Law, §§ 286, 287.

29 Adams *v.* Smith. 20 Abb. N. C. 60.

30 Deceased nephews and nieces, who have descendants living, being counted for the purpose of division as themselves living.

(perhaps subject to a life estate above mentioned) the share their deceased parent would have taken if living; which would be such portion as would have come to their parent upon the equal division of the real estate among the brothers and sisters of the deceased, deceased brothers and sisters, who have descendants living, being counted for the purpose of division as themselves living.

§ 4. **Nephews and Nieces take Personal Estate.**— Nephews and nieces take no portion of the personal estate of a deceased, if the deceased leaves any descendant,[31] husband,[32] or father.[33] Neither can nephews and nieces take if their parent (being a brother or sister of the deceased) be living.[34]

Where nephews and nieces are not excluded as above, they take or share in the personal estate as follows:

(1.) If the deceased leaves a widow, mother, and a brother or sister, the nephews and nieces, who are children of a deceased brother or sister, take

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31 Code, § 2732, subds. 1, 3, 4, 5.

32 See authorities cited in notes under Husband — Personal Estate, p. 36.

33 Code, § 2732, subd. 7.

34 For they are neither next of kin, nor do they represent their parent.

in equal portions[35] the share their parent would have taken if living; which would be such portion of one-half of the personal estate as would come to their parent upon the division of the same, in equal shares, among the mother, and brothers and sisters, deceased brothers and sisters, who have one or more descendants living, being counted for the purpose of division as themselves living.[36]

(2.) If the deceased leaves a mother and a brother or sister, but no widow, all is distributable in like manner.[37]

(3.) If the deceased leaves a widow and mother, but no brother or sister, one-half is distributable in equal shares to the mother and representatives of deceased brothers and sisters, who are nephews and nieces, deceased nephews and nieces, who have descendants living, being counted for the purpose of division as themselves living.[38]

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35 Deceased nephews and nieces, who have descendants living, being counted for the purpose of division as themselves living.

36 Code, § 2732, subd. 6.

37 Id.

38 Code, § 2732, subds. 5, 12. See Matter of Davenport, 172 N. Y. 454, aff'g 67 App. Div. 191. It is assumed that the Matter of Davenport, will not be followed or will be limited

(4.) If the deceased leaves a mother but no brother, sister or widow, all is distributable in the same manner.[39]

(5.) If the deceased leaves a widow and brother or sister, but no mother, the nephews and nieces, who are children of a deceased brother or sister, take in equal portions[40] the share their parent would have taken if living; which would be such portion of one-half, less two thousand dollars (if any remain) as would come to their parent upon the equal division of the same *per capita* among the brothers and sisters, deceased brothers and sisters, who have one or more descendants living, being counted for the purpose of division as themselves living.[41]

(6.) If the deceased leaves a widow but no brother,

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or distinguished in subsequent litigation. A discussion of the reasons for such a belief would be too voluminous for this note. It is sufficient here to say that any other course will render the law of intestate succession very unsettled and the statute as to collaterals incomprehensible. Besides the recent amendment of subdivision 5 (see appendix B) furnishes an important element not present in the above-mentioned case. See also Matter of Thompson, 41 Misc. 223.

[39] Id.

[40] Deceased nephews and nieces, who have descendants living, being counted for the purpose of division as themselves living.

[41] Code, § 2732, subds. 1–5.

sister or mother, the nephews and nieces take in equal portions[42] all that may remain of one-half, if any, after deducting two thousand dollars.[43]

(7.) If the deceased leaves a brother or sister but no widow or mother, the nephews and nieces, who are children of a deceased brother or sister, take in equal portions[44] the share their parent would have taken if living; which would be such portion of the whole as would come to the parent upon the equal division of the same *per capita* among the brothers and sisters, deceased brothers and sisters, who have one or more descendants living, being counted for the purpose of division as themselves living.[45]

(8.) If the deceased leaves no brother, sister, widow or mother, all is distributable in equal portions *per capita* between the nephews[46] and nieces, deceased nephews and nieces, who have

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42 See note 40.

43 Code Civ. Pro. § 2732, subd. 3.

44 Deceased nephews and nieces, who have descendants living, being counted for the purpose of division as themselves living.

45 Code, § 2732, subd. 5.

46 Hurtin *v.* Proal, 3 Bradf. 414; Fletcher *v.* Severs, 30 N. Y. St. R. 826.

descendants living, being counted for the purpose of division as themselves living.[47]

§ 5. **Grandnephews and Grandnieces take Real Estate.**— Grandnephews and grandnieces take no portion of the real estate of a deceased where such deceased leaves any descendant.[48] Neither can grandnephews or grandnieces inherit if their parent (being a nephew or niece of the deceased) or grandparent (being a brother or sister of the deceased) be living.[49] Neither can they inherit if the deceased leaves a father; except (1st) where the inheritance came to the deceased on the part of the mother,[50] or (2d) where the father is incapable of inheriting, as from alienage or the like.[51] In the first case, if the mother be dead, grandnephews and grandnieces, who are not excluded as above, inherit subject to the life estate of the father.[52] In either case, if the mother be living, they, if not excluded as above, inherit subject to her life estate.[53] In all cases if the father be dead and the mother be living, grandnephews and grandnieces, who are not excluded as above, inherit subject

47 See note 38.

48 R. P. Law, §§ 281, 282.

49 R. P. Law, §§ 286, 287.

50 R. P. Law, § 285. As to what property is said to have come to the deceased on the part of the mother, see p. 28.

51 R. P. Law, §§ 284, 285.

52 Id.

53 Id.

to the mother's life estate.[54] If the deceased leaves a widow, the real estate is taken subject to her rights.[55] If the deceased leaves a husband, to whom a child was born alive, the real estate is taken subject to the husband's right of curtesy.[56]

Where grandnephews and grandnieces are not excluded from the inheritance as above, they inherit as follows:[57]

(1.) If the deceased leaves no brother, sister, nephew or niece, the grandnephews and grandnieces inherit all the real estate (perhaps subject to a life estate above mentioned) in equal portions; deceased grandnephews and grandnieces, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves a nephew or niece, but no brother or sister, the grandnephews and grandnieces, who are children of a deceased nephew or niece, take in equal portions[58] (per-

54 R. P. Law, § 285.

55 For the rights of a widow, see Widow, p. 30, § 1.

56 See Husband, p. 35.

57 R. P. Law, §§ 286, 287.

58 Deceased grandnephews and grandnieces, who have descendants living, being counted for the purpose of division as themselves living.

haps subject to a life estate above mentioned) the share their parent would have taken if living, which would be such a portion as would come to their parent upon the equal division of the real estate among the nephews and nieces; deceased nephews and nieces, who have descendants living, being counted for the purpose of division as themselves living.

(3.) If the deceased leaves a brother or sister, the grandnephews and grandnieces, who are not excluded by a living ancestor as above, take by representation (perhaps subject to a life estate above mentioned) the portion their grandparent would have taken if living, which would be such portion as would come to such grandparent upon the equal division of the real estate among the brothers and sisters of the deceased; deceased brothers and sisters, who have descendants living, being counted for the purpose of division as themselves living.

§ 6. **Grandnephews and Grandnieces take Personal Estate.**— Grandnephews and grandnieces take no portion of the personal estate of the deceased if such deceased leaves any descendant,[59] husband,[60] or father.[61]

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[59] Code, § 2732, subds. 1–5.

[60] Code Civ. Pro. § 2732, and cases cited in notes under Husband — Personal Estate, p. 33.

[61] Code, § 2732, subd. 7.

Neither can grandnephews and grandnieces take if their parent (being a nephew or niece) or a grandparent (being a brother or sister of deceased) be living.

They are also excluded if the deceased leaves a widow and no mother, brother, sister, nephew or niece.[62]

Where grandnephews and grandnieces are not excluded as above they take or share in the personal estate (which does not go to a surviving widow or mother) the same as if it were real estate.[63] See p. 67.

§ 7. **Great-grandnephews and Great-grandnieces take Real Estate.**— Great-grandnephews and great-grandnieces take no portion of the real estate of a deceased, where such deceased leaves any descendant.[64] Neither can great-grandnephews or great-grandnieces inherit if their parent (being a grandnephew or grandniece of the deceased), grandparent (being a nephew or niece of the deceased) or great-grandparent (being a brother or sister of the deceased) be living.[65] Neither can they inherit if the deceased leaves a father, except (1st) where the in-

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[62] Code, § 2732, subd. 3.

[63] Code, § 2732, subd. 5. See note 38.

[64] R. P. Law, §§ 281, 282.

[65] R. P. Law, §§ 286, 287.

heritance came to the deceased on the part of the mother;[66] or (2d) where the father is incapable of inheriting, as from alienage or the like.[67] In the first case, if the mother be dead, great-grandnephews and great-grandnieces, who are not excluded as above, inherit subject to the life estate of the father.[68] In either case, if the mother be living, they inherit subject to her life estate.[69] In all cases, if the mother be living and the father be dead, great-grandnephews and great-grandnieces, who are not excluded as above, take subject to the mother's life estate.[70] If the deceased leaves a widow, the real estate is taken subject to her rights.[71] If the deceased leaves a husband, to whom a child was born alive, the real estate is taken subject to his right of curtesy.[72]

Where great-grandnephews and great-grandnieces are not excluded from the inheritance as above, they inherit as follows:[73]

(1.) If the deceased leaves no brother, sister, nephew, niece, grandnephew or grandniece, the

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66 As to what property is said to have come to a deceased on the part of his mother, see p. 28.

67 R. P. Law, §§ 284, 285.

68 Id.

69 Id.

70 Id.

71 For the rights of a widow, see Widow, p. 30, § 1.

72 See Husband, p. 35.

73 R. P. Law, §§ 286, 287.

great-grandnephews and great-grandnieces inherit all the real estate (perhaps subject to a life estate above mentioned) in equal portions, deceased great-grandnephews and great-grandnieces, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves a grandnephew, or a grandniece, but no nephew, niece, brother or sister, the great-grandnephews and great-grandnieces, who are children of a deceased grandnephew or grandniece, take in equal portions [74] (perhaps subject to a life estate above mentioned) the share their parent would have taken if living; which would be such portion as would come to their parent upon the equal division of the real estate among the grandnephews and grandnieces of the deceased, deceased grandnephews and grandnieces, who have descendants livng, being counted for the purpose of division as themselves living.

(3.) If the deceased leaves a nephew or niece, but no brother or sister, the great-grandnephews and great-grandnieces, who are not excluded by a

[74] Deceased great-grandnephews and great-grandnieces, who have descendants living, being counted for the purpose of division as themselves living.

living ancestor as above, take or share in by representation (perhaps subject to a life estate above mentioned) the portion their grandparent (being a nephew or niece of the deceased) would have taken if living; which would be such portion as would come to their grandparent upon the equal division of the real estate among the nephews and nieces, deceased nephews and nieces, who have descendants living, being counted for the purpose of division as themselves living.

(4.) If the deceased leaves a brother or sister, the great-grandnephews and great-grandnieces, who are not excluded by a living ancestor as above, take or share in by representation (perhaps subject to a life estate above mentioned) the portion their great-grandparent (being a brother or sister of the deceased) would have taken if living, which would be such portion as would come to their great-grandparent upon an equal division of the real estate among the brothers and sisters of the deceased, deceased brothers and sisters, who have descendants living, being counted for the purpose of division as themselves living.

§ 8. **Great-grandnephews and Great-grandnieces take Personal Estate.**— Great-grandnephews and great-grandnieces take no portion of the personal estate of a

deceased if such deceased leaves any descendant, husband, or father.[75]

Neither can great-grandnephews and great-grandnieces take if their parent (being a grandnephew or grandniece), grandparent (being a nephew or niece) or a great-grandparent (being a brother or sister of deceased) be living.

They are also excluded if the deceased leaves a widow and no mother, brother, sister, nephew or niece.[76]

Where great-grandnephews and great-grandnieces are not excluded as above they take or share in the personal estate (which does not go to a surviving widow or mother) the same as if it were real estate. See p. 70.

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[75] See notes under grandnephews and grandnieces.

[76] Code, § 2732, subds. 3, 5.

CHAPTER VII.

OF THE RIGHTS OF UNCLES AND AUNTS AND THEIR DESCENDANTS.

§ 1. **Uncles and Aunts take Real Estate.**— Uncles and aunts[1] inherit no portion of the real estate of a deceased if such deceased leaves any descendant, parent, brother, sister, or descendant of a brother or sister.[2] If the deceased leaves a widow, the real estate is taken subject to her rights.[3] If the deceased leaves a husband, to whom a child was born alive, the real estate is taken subject to his right of curtesy.[4]

Where uncles and aunts are not excluded from the inheritance as above, and the inheritance did not

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[1] As to the half-blood, see R. P. Law, § 290; Beebee *v.* Griffing, 14 N. Y. 235, and see *ante*, p. 16. If aliens, see Leary *v.* Leary, 50 How. Pr. 122, and *ante*, p. 18.

[2] R. P. Law, §§ 281–288.

[3] For the rights of a widow, see Widow, p. 30, § 1.

[4] See Husband, p. 35.

come to the deceased on the part of either the father or mother,[5] they inherit all the real estate (perhaps subject to dower or curtesy above mentioned) in equal portions *per capita;* deceased uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.[6]

Where paternal uncles and aunts are not excluded as above, they inherit as follows:[7]

(1.) If the inheritance came to the deceased on the part of the father[8] they inherit all such real estate (perhaps subject to dower or curtesy above mentioned) in equal portions; deceased paternal uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.[9]

(2.) If the inheritance came to the deceased on the part of the mother[10] and the deceased leaves no maternal uncle or aunt, or descendant of

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5 As to when real estate is said to have come to a deceased on the part of father or mother, see p. 28.

6 R. P. Law, § 288.

7 Id.

8 As to when real estate is said to have come to a deceased on the part of father or mother, see p. 28.

9 Leary *v.* Leary, 50 How. Pr. 122; Valentine *v.* Wetherill, 31 Barb. 655.

10 See note 8, above.

either, the paternal uncles and aunts inherit such real estate as last above mentioned.

Where maternal uncles and aunts are not excluded as above, they inherit as follows:[11]

(1.) If the inheritance came to the deceased on the part of the mother,[12] they inherit all such real estate (perhaps subject to dower or curtesy as above mentioned) in equal portions; deceased maternal uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the inheritance came to the deceased on the part of the father,[13] and the deceased leaves no paternal uncle or aunt, or descendant of either, the maternal uncles and aunts inherit all such real estate as last above mentioned.

§ 2. **Uncles and Aunts take Personal Estate.**— Uncles and aunts take no portion of the personal estate of a deceased, if such deceased leaves any descendant,[14] husband,[15] widow,[16] parent,[17] grandpa-

[11] R. P. Law, § 288.

[12] As to when real estate is said to have come to a deceased on the part of father or mother, see p. 28.

[13] Id.

[14] Code, § 2732, subds. 1–5.

[15] See authorities under Husband — Personal Estate, p. 36.

[16] Code, § 2732, subd. 3.

[17] Code Civ. Pro. § 2732, subds. 7, 8.

rent,[18] brother, sister,[19] or descendant of a brother or sister.[20]

Where uncles and aunts[21] are not excluded, as above, they take or share all the personal estate of the deceased in equal portions *per capita* with such great-grandparents[22] of the deceased as may be living, deceased uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.[23]

§ 3. **Cousins take Real Estate.**— Cousins inherit no portion of the real estate of a deceased if such deceased leaves any descendant, parent, brother, sister, or descendant of a brother or sister.[24] Neither can cousins inherit if their parent (being an uncle or aunt of the deceased) be living.[25] If the deceased leaves a widow, the real estate is taken subject to her rights.[26] If the deceased leaves a husband, to whom

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18 Bogert *v.* Furman, 10 Paige Ch. 496.

19 Bogert *v.* Furman, 10 Paige Ch. 496; Sweezy *v.* Willis, 1 Bradf. 495.

20 Code, § 2732, subd. 5.

21 A paternal aunt of the half-blood and a maternal aunt of the whole-blood took equally. Hallet *v.* Hare, 5 Paige. 316. See also *ante*, p. 16.

22 For they are all of equal degree to the deceased. Code, § 2732, subds. 5, 10, 12.

23 Code, § 2732, subds. 5, 12. See note 38, p. 63.

24 R. P. Law, § 288.

25 R. P. Law, §§ 281–288.

26 For the rights of a widow, see Widow, p. 30.

a child was born alive, the real estate is taken subject to his right of curtesy.[27]

Where the real estate did not come to the deceased on the part of either the father or mother,[28] and the cousins are not excluded from the inheritance as above, they inherit as follows:[29]

(1.) If the deceased leaves no uncle or aunt, the cousins inherit in equal portions (perhaps subject to dower or curtesy above mentioned) all the real estate which did not come to the deceased on the part of either father or mother; deceased cousins, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves an uncle or aunt, the cousins, who are children of a deceased uncle or aunt, take in equal portions[30] (perhaps subject to dower or curtesy above mentioned) the share their parent would have taken if living; which would be such portion as would come to their

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27 See Husband, p. 35.

28 As to when real estate is said to have come to a deceased on the part of father or mother, see p. 28.

29 R. P. Law, § 288; Hyatt *v.* Pugsley, 23 Barb. 300; Hyatt *v.* Pugsley, 33 Id. 373; Kelly *v.* Kelly, 5 Lans. 446; aff'd. without passing on this point, in 61 N. Y. 47.

30 Deceased cousins, who have descendants living, being counted for the purpose of division as themselves living.

parent upon the equal division of such real estate among the uncles and aunts of the deceased; deceased uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.

Where the real estate came to the deceased on the part of the father[31] and paternal cousins are not excluded from the inheritance as above, they inherit as follows:[32]

(1.) If the deceased leaves no paternal uncle or aunt, the paternal cousins inherit in equal portions (perhaps subject to dower or curtesy above mentioned) all the real estate which came to the deceased on the part of the father; deceased paternal cousins, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves a paternal uncle or aunt, the paternal cousins, who are children of a deceased uncle or aunt, take in equal portions[33] (perhaps subject to dower or curtesy above mentioned) the share their parent would have taken

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31 As to when real estate is said to have come to a deceased on the part of father or mother, see p. 28.

32 R. P. Law, § 288.

33 Deceased paternal cousins, who have descendants living, being counted for the purpose of division as themselves living.

if living; which would be such portion as would come to their parent upon the equal division of such real estate among the paternal uncles and aunts of the deceased; deceased paternal uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.

(3.) If the deceased leaves no paternal uncle or aunt, or descendant of either, maternal cousins inherit as if the inheritance came to the deceased on the part of the mother.

Where the real estate came to the deceased on the part of the mother[34] and the maternal cousins are not excluded from the inheritance as above, they inherit as follows:[35]

(1.) If the deceased leaves no maternal uncle or aunt, maternal cousins inherit in equal portions (perhaps subject to dower or curtesy above mentioned) all the real estate which came to the deceased on the part of the mother; deceased maternal cousins, who have descendants living, being counted for the purpose of division as themselves living.

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[34] As to when real estate is said to have come to a deceased on the part of the father or mother, see p. 28.

[35] R. P. Law, § 288.

(2.) If the deceased leaves a maternal uncle or aunt, maternal cousins who are children of a deceased uncle or aunt take in equal portions[36] (perhaps subject to dower or curtesy above mentioned) the share their parent would have taken if living; which would be such portion as would come to their parent upon the equal division of such real estate among the maternal uncles and aunts of the deceased; deceased maternal uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.

(3.) If the deceased leaves no maternal uncle or aunt, or descendant of either, paternal cousins inherit as if the inheritance came to the deceased on the part of the father.

§ 4. **Cousins take Personal Estate.**— Cousins take no portion of the personal estate of a deceased if such deceased leaves any descendant,[37] husband,[38] widow,[39] parent,[40] grandparent,[41] brother, sister,[42] or descendant of a brother or sister.

36 Deceased maternal cousins, who have descendants living, being counted for the purpose of division as themselves living.

37 Code, § 2732, subds. 1–5.

38 See authorities under Husband — Personal Estate, p. 35.

39 Code, § 2732, subd. 3.

40 Code, § 2732, subds. 7, 8.

41 Grandparents exclude uncles and aunts. Bogert *v.* Furman, 10 Paige Ch. 496; Sweezy *v.* Willis, 1 Bradf. 495.

42 Code, § 2732, subds. 5, 12.

Neither can cousins take if their parent (being an uncle or aunt of the deceased) be living.[43]

Where cousins are not excluded as above, they take or share in the personal estate of the deceased the same as if it were real estate, which did not come to the intestate on the part of either father or mother.[44] See p. 78.

§ 5. **Children of Cousins take Real Estate.**— Children of cousins inherit no portion of the real estate of a deceased, if such deceased leaves any descendant, parent, brother, sister, or descendant of a brother or sister.[45] Neither can children of cousins inherit if their parent (being a cousin of the deceased) or grandparent (being an uncle or aunt of the deceased) be living.[46] If the deceased leaves a widow, the real estate is taken subject to her rights.[47] If the deceased leaves a husband to whom a child was born alive, the real estate is taken subject to his right of curtesy.[48]

Where the real estate did not come to the deceased on the part of either the father or mother,[49] and the

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43 Id.

44 Id. See note 38, p. 63.

45 R. P. Law, §§ 281–288.

46 R. P. Law, § 288.

47 For the rights of a widow, see Widow, p. 30.

48 See Husband, p. 35.

49 As to when real estate is said to have come to a deceased on the part of father or mother, see p. 28.

children of cousins are not excluded from the inheritance as above, they inherit as follows:[50]

(1) If the deceased leaves no uncle, aunt or cousin, the children of cousins inherit in equal portions (perhaps subject to dower or curtesy as above mentioned) all such real estate; deceased children of cousins, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves a cousin, but no uncle or aunt, the children of cousins, who are children of a deceased cousin, take in equal portions[51] (perhaps subject to dower or curtesy as above mentioned) the share their parent would have taken if living; which would be such portion as would come to the parent upon the equal division of such real estate among the cousins; the deceased cousins, who have descendants living, being counted for the purpose of division as themselves living.[52]

(3.) If the deceased leaves an uncle or aunt, the children of cousins, who are not excluded by a

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[50] R. P. Law, § 288.

[51] Deceased children of cousins, who have descendants living, being counted for the purpose of division as themselves living.

[52] Hyatt *v.* Pugsley, 23 Barb. 285; aff'd in 33 Barb. 373.

living ancestor as above, take or share in by representation (perhaps subject to dower or curtesy as above mentioned) the portion their grandparent (an uncle or aunt of the deceased) would have taken if living; which would be such portion as would come to such grandparent upon the equal division of such real estate among the uncles and aunts; deceased uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.

Where the real estate came to the deceased on the part of the father,[53] and the children of paternal cousins are not excluded from the inheritance as above, they inherit as follows:[54]

(1.) If the deceased leaves no paternal uncle, aunt, or cousin, the children of paternal cousins inherit in equal portions (perhaps subject to dower or curtesy as above mentioned) all the real estate which came to the deceased on the part of the father; deceased children of paternal cousins, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves a paternal cousin, but no paternal uncle or aunt, the children of pater-

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[53] As to when real estate is said to have come to a deceased on the part of father, see p. 28.

[54] R. P. Law, § 288.

nal cousins, who are children of a deceased paternal cousin, take in equal portions[55] (perhaps subject to dower or curtesy as above mentioned) the share their parent (a paternal cousin of the deceased) would have taken if living; which would be such portion as would come to their parent upon the equal division of such real estate among the paternal cousins; the deceased paternal cousins, who have descendants living, being counted for the purpose of division as themselves living.

(3.) If the deceased leave a paternal uncle or aunt, the children of paternal cousins, who are not excluded by a living ancestor as above, take or share in by representation (perhaps subject to dower or curtesy as above mentioned) the portion their grandparents (a paternal uncle or aunt of the deceased) would have taken if living; which would be such portion as would come to such grandparent upon the equal division of such real estate among the paternal uncles and aunts; deceased paternal uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.

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[55] Deceased children of paternal cousins, who have descendants living, being counted for the purpose of division as themselves living.

(4.) If the deceased leaves no paternal uncle or aunt, or descendants of either, the children of maternal cousins inherit as if the inheritance came to the deceased on the part of the mother.

Where the real estate came to the deceased on the part of the mother,[56] and the children of maternal cousins are not excluded from the inheritance as above, they inherit as follows:[57]

(1.) If the deceased leaves no maternal uncle, aunt, or cousin, the children of maternal cousins inherit in equal portions (perhaps subject to dower or curtesy as above mentioned) all the real estate which came to the deceased on the part of the mother; deceased children of maternal cousins, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves a maternal cousin, but no maternal uncle or aunt, the children of maternal cousins, who are children of a deceased maternal cousin, take in equal portions[58] (per-

56 As to when real estate is said to have come to a deceased on the part of mother, see p. 28.

57 R. P. Law, § 288.

58 Deceased children of maternal cousins who have descendants living, being counted for the purpose of division as themselves living.

haps subject to dower or curtesy as above mentioned) the share their parent (a maternal cousin of the deceased) would have taken if living; which would be such portion as would come to their parent upon the equal division of such real estate among the maternal cousins; the deceased maternal cousins, who have descendants living, being counted for the purpose of division as themselves living.

(3.) If the deceased leaves a maternal uncle or aunt, the children of maternal cousins, who are not excluded by a living ancestor as above, take or share in by representation (perhaps subject to dower or curtesy as above mentioned) the portion their grandparent (a maternal uncle or aunt of the deceased) would have taken if living; which would be such portion as would come to such grandparent upon the equal division of such real estate among the maternal uncles and aunts; deceased maternal uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.

(4.) If the deceased leaves no maternal uncle or aunt, or descendants of either, the children of paternal cousins inherit as if the inheritance came to the deceased on the part of the father.

§ 6. **Children of Cousins take Personal Estate.**— Children of cousins take no portion of the personal estate of a deceased if such deceased leaves any descendant, husband, widow, parent, grandparent, brother, sister, or descendant of a brother or sister.[59]

Neither can children of cousins take if their parent (being a cousin) or their grandparent (being an uncle or aunt of deceased) be living.

Where children of cousins are not excluded as above they take or share in the personal estate of the intestate the same as if it were real estate, which did not come to the intestate on the part of either father or mother. See p. 82.[60]

§ 7. **Grandchildren of Cousins take Real Estate.** — Grandchildren of cousins inherit no portion of the real estate of a deceased if such deceased leaves any descendant, parent, brother, sister, or descendant of a brother or sister.[61] Neither can grandchildren of cousins inherit if their parent (being a child of a cousin of the deceased), grandparent (being a cousin of the deceased), or great-grandparent (being an uncle or aunt of the deceased) be living.[62] If the deceased leaves a widow, the real estate is taken subject to her rights.[63] If the deceased leaves a husband,

59 Code, § 2732, subds. 5, 12. See note 38, p. 63.

60 Code, § 2732, subds. 5, 10, 12. See note 38, p. 63.

61 R. P. Law, §§ 281–288.

62 R. P. Law, § 288.

63 For rights of a widow, see Widow, p. 30.

to whom a child was born alive, the real estate is taken subject to the husband's right of curtesy.[64]

Where the real estate did not come to the deceased on the part of either the father or mother,[65] and the grandchildren of cousins are not excluded from the inheritance as above, they inherit as follows:[66]

(1.) If the deceased leaves no uncle, aunt, cousin, or child of a cousin, the grandchildren of cousins inherit in equal portions (perhaps subject to dower or curtesy as above mentioned) all such real estate; deceased grandchildren of cousins, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves a child of a cousin, but no uncle, aunt, or cousin, the grandchildren of cousins, who are children of a deceased child of a cousin, take in equal portions[67] (perhaps subject to dower or curtesy as above mentioned) the share their parent would have taken if living; which would be such portion as would come to their parent upon the equal division of such real

64 See Husband, p. 35.

65 As to when real estate is said to have come to a deceased on the part of father or mother, see p. 28.

66 R. P. Law, § 288.

67 Deceased grandchildren of cousins, who have descendants living, being counted for the purpose of division as themselves living.

estate among the children of cousins, the deceased children of cousins, who have descendants living, being counted for the purpose of division as themselves living.

(3.) If the deceased leaves a cousin, but no uncle or aunt, the grandchildren of cousins, who are not excluded by a living ancestor as above indicated, take or share in, by representation, the portion their grandparent (a cousin of the deceased) would have taken if living; which would be such portion as would come to their parent upon the equal division of such real estate among the cousins; deceased cousins, who have descendants living, being counted for the purpose of division as themselves living.

(4.) If the deceased leaves an uncle or aunt, the grandchildren of cousins, who are not excluded by a living ancestor as above indicated, take or share in, by representation, the portion their great-grandparent (an uncle or aunt of the deceased) would have taken if living; which would be such portion as would come to their great-grandparent upon the equal division of such real estate among the uncles and aunts; deceased uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.

Where the real estate came to the deceased on the part of the father,[68] and the grandchildren of paternal cousins are not excluded by a living ancestor as above indicated, they inherit as follows:[69]

(1.) If the deceased leaves no paternal uncle, aunt, cousin, or child of a paternal cousin, the grandchildren of paternal cousins inherit in equal portions (perhaps subject to dower or curtesy as above mentioned) all such real estate; deceased grandchildren of paternal cousins, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves a child of a paternal cousin, but no paternal uncle, aunt, or cousin, the grandchildren of paternal cousins, who are children of a deceased child of a paternal cousin, take in equal portions[70] (perhaps subject to dower or curtesy as above mentioned) the share their parent would have taken if living; which would be such portion as would come to their parent (a child of a paternal cousin of the de-

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68 As to when real estate is said to have come to a deceased on the part of father or mother, see p. 28.

69 R. P. Law, § 288.

70 Deceased grandchildren of paternal cousins, who have descendants living, being counted for the purpose of division as themselves living.

ceased) upon the equal division of such real estate among the children of paternal cousins; deceased children of paternal cousins, who have descendants living, being counted for the purpose of division as themselves living.

(3.) If the deceased leaves a paternal cousin, but no paternal uncle or aunt, the grandchildren of paternal cousins, who are not excluded by a living ancestor as above indicated, take or share in, by representation (perhaps subject to dower or curtesy as above mentioned) the portion their grandparent (a paternal cousin of the deceased) would have taken if living; which would be such portion as would come to their grandparent upon the equal division of such real estate among the paternal cousins; deceased paternal cousins, who have descendants living, being counted for the purpose of division as themselves living.

(4.) If the deceased leaves a paternal uncle or aunt, the grandchildren of paternal cousins, who are not exxcluded by a living ancestor as above indicated, take or share in, by representation (perhaps subject to dower or curtesy as above mentioned) the portion their great-grandparent (a paternal uncle or aunt of the deceased) would have taken if living; which would be such portion as would come to their great-grandparent

upon the equal division of such real estate among paternal uncles and aunts; deceased paternal uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.

(5.) If the deceased leaves no paternal uncle or aunt, or descendant of either, the grandchildren of maternal cousins inherit as if the inheritance came to the deceased on the part of the mother.

Where the real estate came to the deceased on the part of the mother,[71] and the grandchildren of maternal cousins are not excluded by a living ancestor as above indicated, they inherit as follows:[72]

(1.) If the deceased leaves no maternal uncle, aunt, cousin, or child of a maternal cousin, the grandchildren of maternal cousins inherit in equal portions (perhaps subject to dower or curtesy as above mentioned) all such real estate; deceased grandchildren of maternal cousins, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves a child of a maternal cousin, but no maternal uncle, aunt, or cousin,

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[71] As to when real estate is said to have come to a deceased on the part of the father or mother, see p. 28.

[72] R. P. Law, § 288.

the grandchildren of maternal cousins, who are children of a deceased child of a maternal cousin, take in equal portions[73] (perhaps subject to dower or curtesy as above mentioned) the share their parent would have taken if living; which would be such portion as would come to their parent upon the equal division of such real estate among the children of maternal cousins; deceased children of maternal cousins, who have descendants living, being counted for the purpose of division as themselves living.

(3.) If the deceased leaves a maternal cousin, but no maternal uncle or aunt, the grandchildren of maternal cousins, who are not excluded by a living ancestor as above indicated, take or share in by representation (perhaps subject to dower or curtesy as above mentioned) the portion their grandparent (a maternal cousin of the deceased) would have taken if living; which would be such portion as would come to their grandparent upon the equal division of such real estate among the maternal cousins; deceased maternal cousins, who have descendants living, being counted for the purpose of division as themselves living.

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[73] Deceased grandchildren of maternal cousins, who have descendants living, being counted for the purpose of division as themselves living.

(4.) If the deceased leaves a maternal uncle or aunt, the grandchildren of maternal cousins, who are not excluded by a living ancestor as above indicated, take or share in by representation (perhaps subject to dower or curtesy as above mentioned) the portion the great-grandparent (a maternal uncle or aunt of the deceased) would have taken if living; which would be such portion as would come to their great-grandparent upon the equal division of such real estate among the maternal uncles and aunts; deceased maternal uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.

(5.) If the deceased leaves no maternal uncle or aunt, or descendant of either, the grandchildren of paternal cousins inherit as if the inheritance came to the deceased on the part of the father.

§ 8. **Grandchildren of Cousins take Personal Estate.** — Grandchildren of cousins take no portion of the personal estate of a deceased, if such deceased leaves[74] any descendant, husband, widow, parent, grandparent, brother, sister, or descendant of brother or sister.[75]

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[74] See notes under head of various relatives named.

[75] Code, § 2732, subds. 5, 12. See note 38, p. 63.

Neither can grandchildren of cousins take if their parent (being a child of a cousin), their grandparent (being a cousin) or their great-grandparent (being an uncle or aunt of deceased) be living.

When grandchildren of cousins are not excluded as above they take a share in the personal estate of the intestate the same as if it were real estate, which did not come to the intestate on the part of either father or mother. See p. 89.[76]

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[76] Id.

CHAPTER VIII.

OF THE RIGHTS OF GREAT-UNCLES AND AUNTS AND THEIR DESCENDANTS.

§ 1. **Great-uncles and Great-aunts take Real Estate.** — Great-uncles and great-aunts inherit no portion of the real estate of a deceased, if such deceased leaves any descendant, parent, brother, sister, descendant of a brother or sister, uncle, aunt, or descendant of an uncle or aunt.[1] If the deceased leaves a widow, the real estate is taken subject to her rights.[2] If the deceased leaves a husband, to whom a child is born alive, the real estate is taken subject to the husband's right of curtesy.[3]

Where great-uncles and aunts are not excluded as above, they inherit according to the course of the

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1 R. P. Law, §§ 281–290.

2 For the rights of the widow, see Widow, p. 30.

3 See Husband, p. 35.

common law,[4] unless the inheritance came to the intestate from a deceased husband or wife.[5]

The common-law rules or canons of descent, as given by Sir William Blackstone in the Second Book of his Commentaries, are as follows:

"I. The first rule is, that inheritance shall lineally descend to the issue of the person who last died actually seized, *in infinitum*; but shall never lineally ascend," p. *208.

"II. A second general rule or canon is, that the male issue shall be admitted before the female,"[6] p. *212.

"III. A third rule or canon of descent is this: that where there are two or more males, in equal degree, the eldest only shall inherit; but the females all together," p. *214.

"IV. A fourth rule or canon of descent is this: that the lineal descendants, *in infinitum*, of any person deceased shall represent their ancestor; that is, shall stand in the same place as the per-

[4] R. P. Law, § 291.

[5] If so it descends to the heirs of such husband or wife. R. P. Law, § 290a.

[6] Great-uncles and their descendants exclude great-aunts. Hunt *v.* Kingston, 3 Misc. 309.

son himself would have done had he been living," p. *216.

"V. A fifth rule is, that on failure of lineal descendants, or issue, of the person last seized, the inheritance shall descend to his collateral relations, being of the blood of the first purchaser; subject to the three preceding rules," p. *220.

"VI. A sixth rule or canon therefore is, that the collateral heir of the person last seized must be his next collateral kinsman of the whole blood," p. *224.

"VII. The seventh and last rule or canon is, that in collateral inheritances the male stocks shall be preferred to the female (that is, kindred derived from the blood of the male ancestors, however remote, shall be admitted before those from the blood of the female, however near), unless where the lands have, in fact, descended from a female," p. *234.

§ 2. **Great-uncles and Great-aunts take Personal Estate.**— Great-uncles and great-aunts take no portion of the personal estate of a deceased, if such deceased leaves[7] any descendant, husband, widow, parent, grandparent, great-grandparent, brother, sister, de-

[7] See notes under head of the various relatives named.

scendant of brother or sister, uncle, aunt, or descendant of uncle or aunt.[8]

Where great-uncles and aunts are not excluded, as above, they take or share all the personal estate of the deceased in equal portions, *per capita,* with such great-great-grandparents of the deceased as may be living,[9] deceased uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.[10]

§ 3. **Children of Great-uncles and aunts take Real Estate.**— Children of great-uncles and aunts inherit no portion of the real estate of a deceased if such deceased leaves any descendant, parent, brother, sister, descendant of a brother or sister, uncle, aunt, or descendant of an uncle or aunt.[11] If the deceased leaves a widow, the real estate is taken subject to her rights.[12] If the deceased leaves a husband, to whom a child was born alive, the real estate is taken subject to the husband's right of curtesy.[13]

Where children of great-uncles and aunts are not excluded as above, their ability to inherit is deter-

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[8] Code, § 2732, subds. 5, 12. See note 38, p. 63.

[9] For they are all of equal degree to the deceased. Code, § 2732, subds. 5, 10.

[10] Code, § 2732, subds. 5, 12. See note 38, p. 63.

[11] R. P. Law, §§ 281, 290.

[12] For the rights of a widow, see Widow, p. 30.

[13] See Husband, p. 35.

mined by the rules of the common law,[14] unless the inheritance came to the intestate from a deceased husband or wife.[15]

§ 4. **Children of Great-uncles and aunts take Personal Estate.**— Children of great-uncles and aunts take no portion of the personal estate of a deceased if such deceased leaves[16] any descendant, husband, widow, parent, grandparent, great-grandparent, brother, sister, descendant of brother or sister, uncle, aunt, or descendant of uncle or aunt.[17]

Neither can they take if their parent (being a great-uncle or great-aunt of the deceased) be living.

Where children of great-uncles and aunts are not excluded, as above, they take or share in the personal estate of the deceased as follows:[18]

(1.) If the deceased leaves no great-uncle or great-aunt, the children of great-uncles and great-aunts take in equal portions, deceased children of great-uncles and great-aunts, who have descend-

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[14] R. P. Law, § 291. See rules given under Great-uncles and Great-aunts, p. 98. Children of great-uncles exclude great-aunts and their children. Hunt *v.* Kingston, 3 Misc. 309.

[15] If so, it descends to the heirs of the deceased husband or wife. R. P. Law, § 290a.

[16] See notes under the head of the various relatives named.

[17] Code Civ. Pro. subds. 5, 10, 12. See note 38, p. 63.

[18] Id.

ants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves a great-uncle or great-aunt, the children of a deceased great-uncle or great-aunt take in equal portions (deceased children of great-uncles or great-aunts, who have descendants living, being counted for the purpose of division as themselves living), the share their parent would have taken if living; which would be such portion as would come to their parent upon the equal division among the great-uncles and great-aunts of the deceased; deceased great-uncles and great-aunts, who have descendants living, being counted for the purpose of division as themselves living.

§ 5. **Second Cousins take Real Estate.**— Second cousins inherit no portion of the real estate of a deceased if such deceased leave any descendant, parent, brother, sister, descendant of a brother or sister, uncle, aunt, or descendant of an uncle or aunt.[19] If the deceased leaves a widow, the real estate is taken subject to her rights.[20] If the deceased leaves a husband, to whom a child was born alive, the real estate is taken subject to the husband's right of curtesy.[21]

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19 R. P. Law, §§ 281–290.

20 For the rights of a widow, see Widow, p. 30.

21 See Husband, p. 35.

Where second cousins are not excluded as above, their ability to inherit is determined by the rules of the common law hereinbefore given,[22] unless the inheritance came to the intestate from a deceased husband or wife.[23]

§ 6. **Second Cousins take Personal Estate.**— Second cousins take no portion of the personal estate of a deceased if such deceased leaves any descendant, husband, widow, parent, grandparent, great-grandparent, brother, sister, descendant of brother or sister, uncle, aunt, or descendant of uncle or aunt.[24]

Neither can they take if their parent (being a child of a great-uncle or great-aunt) or their grandparent (being a great-uncle or great-aunt) be living.[25]

Where second cousins are not excluded as above, they take or share in the personal estate of the deceased as follows:[26]

(1.) If the deceased leaves no great-uncle, great-aunt, or child of a great-uncle or aunt, second cousins take in equal portions; deceased second cousins, who have descendants living, being

22 R. P. Law, § 291. See rules given under Great-uncles and Great-aunts, p. 98.

23 If so, it descends to the heirs of such husband or wife. R. P. Law, § 290a.

24 Code, § 2732, subds. 5, 12. See note 38, p. 63.

25 See notes under the head of the various relatives named.

26 Code, § 2732, subds. 5, 12. See note 38, p. 63.

counted for the purpose of division as themselves living.

(2.) If the deceased leaves a child of a great-uncle or aunt, but no great-uncle or great-aunt, the second cousins, who are children of a deceased child of a great-uncle or aunt, take in equal portions (deceased second cousins, who have descendants living, being counted for the purpose of division as themselves living) the share their parent would have taken if living; which would be such portion as would come to the parent upon the equal division among the children of great-uncles and aunts; deceased children of great-uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.[27]

(3.) If the deceased leaves a great-uncle or great-aunt, the second cousins who are not excluded by a living ancestor as above, take or share in by representation the share their grandparent (being a great-uncle or great-aunt of the deceased) would have taken if living; which would be such portion as would come to such grandparent upon an equal division among the great uncles and great-aunts; deceased great-uncles and aunts,

27 Code Civ. Pro. § 2732, subds. 5, 10, 12.

who have descendants living, being counted for the purpose of division as themselves living.

§ 7. **Children of Second Cousins take Real Estate.**— Children of second cousins inherit no portion of the real estate of a deceased if such deceased leaves any descendant, parent, brother, sister, descendant of a brother or sister, uncle, aunt, or descendant of an uncle or aunt.[28] If the deceased leaves any widow, the real estate is taken subject to her rights.[29] If the deceased leaves a husband, to whom a child was born alive, the real estate is taken subject to the husband's right of curtesy.[30]

Where children of second cousins are not excluded as above, their ability to inherit is determined by the rules of the common law hereinbefore given,[31] unless the inheritance came to the intestate from a deceased husband or wife.[32]

§ 8. **Children of Second Cousins take Personal Estate.**— Children of second cousins take no portion of the personal estate of a deceased, if such deceased leaves[33] any descendant, husband, widow, parent,

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28 R. P. Law, §§ 281–290.

29 For the rights of a widow, see Widow, p. 30.

30 See Husband, p. 35.

31 R. P. Law, § 291; McCarthy *v.* Marsh, 5 N. Y. 263. See rules given under Great-uncles and Great-aunts, p. 98.

32 If so, it descends to the heirs of such husband or wife. R. P. Law, § 290a.

33 See notes under the head of the various relatives named.

grandparent, great-grandparent, brother, sister, descendant of a brother or sister, uncle, aunt, or descendant of an uncle or aunt.[34]

Neither can they take if their parent (being a second cousin), their grandparent (being a child of a great-uncle or aunt), or their great-grandparent (being a great-uncle or aunt of the deceased) be living.

Where children of second cousins are not excluded as above, they take or share in the personal estate of the deceased as follows:[35]

(1.) If the deceased leaves no great-uncle, great-aunt, child of a great-uncle or aunt, or second cousin, the children of second cousins take in equal portions; deceased children of second cousins, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves a second cousin but no great-uncle, great-aunt or child of a great-uncle or aunt, the children of deceased second cousins, take in equal portions (deceased children of second cousins, who have descendants living, being counted for the purpose of division as themselves living) the share their parent would have taken if living; which would be such portion as would come to their parent upon the equal division

[34] Code, § 2732, subds. 5, 10, 12. See note 38, p. 63.

[35] Id.

among the second cousins; deceased second cousins, who have descendants living, being counted for the purpose of division as themselves living.

(3.) If the deceased leaves a child of a great-uncle or aunt, but no great-uncle or great-aunt, children of second cousins, who are not excluded by a living ancestor as above, take or share in by representation, the portion their grandparent (a child of a great-uncle or aunt) would have taken if living; which would be such portion as would come to their grandparent upon the equal division among the children of great-uncles and great-aunts; deceased great-uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.

(4.) If the deceased leaves a great-uncle or great-aunt, the children of second cousins, who are not excluded by a living ancestor as above, take or share in, by representation, the portion their great-grandparent (a great-uncle or great-aunt of deceased) would have taken if living; which would be such portion as would come to their great-grandparent upon the equal division among the great-uncles and great-aunts; deceased great-uncles and great-aunts, who have descendants living, being counted for the purpose of division as themselves living.

CHAPTER IX.

OF THE RIGHTS OF GREAT-GREAT-UNCLES AND AUNTS AND THEIR DESCENDANTS.

§ 1. **Great-great-uncles and Great-great-aunts take Real Estate.**—Great-great-uncles and great-great-aunts inherit no portion of the real estate of a deceased if such deceased leaves any descendant, parent, brother, sister, descendant of a brother or sister, uncle, aunt, or descendant of an uncle or aunt.[1] If the deceased leaves a widow, the real estate is taken subject to her rights.[2] If the deceased leaves a husband, to whom a child was born alive, the real estate is taken subject to the husband's right of curtesy.[3]

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1 R. P. Law, §§ 281–290.

2 For the rights of a widow, see Widow, p. 30.

3 See Husband, p. 35.

Where great-great-uncles and great-great-aunts are not excluded as above, their ability to inherit is determined by the rules of the common law hereinbefore given,[4] unless the inheritance came to the intestate from a deceased husband or wife.[5]

§ 2. **Great-great-uncles and Great-great-aunts take Personal Estate.**— Great-great-uncles and great-great-aunts take no portion of the personal estate of a deceased, if such deceased leaves[6] any descendant, husband, widow, parent, grandparent, great-grandparent, great-great-grandparent, brother, sister, descendant of brother or sister, uncle, aunt, descendant of an uncle or aunt, great-uncle, great-aunt, or descendant of a great-uncle or great-aunt.[7]

Where great-great-uncles and great-great-aunts are not excluded as above, they take or share in the personal estate of the deceased, in equal portions, *per capita,* with such great-great-great-grandparents of the deceased as may be living; deceased great-great-uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.[8]

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4 R. P. Law, § 291. See rules given under Great-uncles and Great-aunts, p. 98.

5 If so, it descends to the heirs of such husband or wife. R. P. Law, § 290a.

6 See notes under the head of the various relatives named.

7 Code Civ. Pro. § 2732, subds. 5, 10, 12.

8 Id.

§ 3. **Children of Great-great-uncles and aunts take Real Estate.**— Children of great-great-uncles and aunts inherit no portion of the real estate of a deceased, if such deceased leaves any descendant, parent, brother, sister, descendant of a brother or sister, uncle, aunt, or descendant of an uncle or aunt.[9] If the deceased leaves a widow, the real estate is taken subject to her rights.[10] If the deceased leaves a husband, to whom a child was born alive, the real estate is taken subject to the husband's right of curtesy.[11]

Where children of great-great-uncles and aunts are not excluded as above, their ability to inherit is determined by the rules of the common law as hereinbefore given,[12] unless the inheritance came to the intestate from a deceased husband or wife.[13]

§ 4. **Children of Great-great-uncles and aunts take Personal Estate.**— Children of great-great-uncles and aunts take no portion of the personal estate of a deceased, if such deceased leaves[14] any descendant, husband, widow, parent, grandparent, great-grandparent,

9 R. P. Law, §§ 280–290.

10 For the rights of a widow, see Widow, p. 30.

11 See Husband, p. 35.

12 R. P. Law, § 291. See rules given under Great-uncles and Great-aunts, p. 98.

13 If so, it descends to the heirs of such husband or wife. R. P. Law, § 290a.

14 See notes under the head of various relatives named.

great-great-grandparent, brother, sister, descendant of brother or sister, uncle, aunt, descendant of uncle or aunt, great-uncle, great-aunt, or descendant of great-uncle or aunt.[15]

Neither can they take if their parent (being a great-great-uncle or aunt of the deceased) be living.

Where children of great-great-uncles and aunts are not excluded as above, they take or share in the personal estate of the deceased as follows:[16]

(1.) If the deceased leaves no great-great-uncle or great-great-aunt, the children of great-great-uncles and aunts take in equal portions; deceased children of great-great-uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves a great-great-uncle or great-great-aunt, the children of deceased great-great-uncles or aunts take in equal portions (deceased children of great-great-uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living), the share their parent would have taken if living; which would be such portion as would come to their parent upon the equal division among the great-great-uncles and aunts of the deceased; de-

[15] Code, § 2732, subds. 5, 12. See note 38, p. 63.

[16] Id.

ceased great-great-uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.

§ 5. **Grandchildren of Great-great-uncles and aunts take Real Estate.**— Grandchildren of great-great-uncles and aunts inherit no portion of the real estate of a deceased, if such deceased leaves any descendant, parent, brother, sister, descendant of a brother or sister, uncle, aunt, or descendant of an uncle or aunt.[17] If the deceased leaves a widow, the real estate is taken subject to her rights.[18] If the deceased leaves a husband, to whom a child was born alive, the real estate is taken subject to the husband's right of curtesy.[19]

Where grandchildren of great-great-uncles and aunts are not excluded as above, their ability to inherit is determined by the rules of the common law hereinbefore given,[20] unless the inheritance came to the intestate from a deceased husband or wife.[21]

§ 6. **Grandchildren of Great-great-uncles and aunts take Personal Estate.**— Grandchildren of great-great-

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17 R. P. Law, §§ 281–290.

18 For the rights of a widow, see Widow, p. 30.

19 See Husband, p. 35.

20 R. P. Law, § 291. See rules given under Great-uncles and Great-aunts, p. 98.

21 If so, it descends to the heirs of such deceased husband or wife. R. P. Law, § 290a.

uncles and aunts take no portion of the personal estate of a deceased if such deceased leaves[22] any descendant, husband, widow, parent, grandparent, great-grandparent, great-great-grandparent, brother, sister, descendant of brother or sister, uncle, aunt, descendant of uncle or aunt, great-uncle or aunt, or descendant of great-uncle or aunt.[23]

Neither can they take if their parent (being a child of a great-great-uncle or aunt) or grandparent (being a great-great-uncle or aunt of the deceased) be living.

Where grandchildren of great-great-uncles and aunts are not excluded as above, they take or share in the personal estate of the deceased as follows:[24]

(1.) If the deceased leaves no great-great-uncle or aunt, or child of a great-great-uncle or aunt, grandchildren of great-great-uncles and aunts take in equal portions; deceased grandchildren of great-great-uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves a child of a great-great-uncle or aunt, but no great-great-uncle or aunt, the grandchildren of great-great-uncles or aunts, who are children of a deceased child of a great-

22 See notes under head of various relatives named.

23 Code, § 2732, subds. 5, 12. See note 38, p. 63.

24 Id.

great-uncle or aunt, take in equal portions (deceased grandchildren of great-great-uncles or aunts, who have descendants living, being counted for the purpose of division as themselves living) the share their parent would have taken if living; which would be such portion as would come to the parent upon the equal division among the children of great-great-uncles and aunts; deceased children of great-great uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.

(3.) If the deceased leaves a great-great-uncle or aunt, the grandchildren of great-great-uncles or aunts, who are not excluded by a living ancestor as above, take or share in by representation the share their grandparent (a great-great-uncle or aunt of the deceased) would have taken if living; which would be such portion as would come to such grandparent upon an equal division among the great-great-uncles and aunts; deceased great-great-uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.

§ 7. **Third Cousins take Real Estate.**— Third cousins inherit no portion of the real estate of a deceased if such deceased leaves any descendant, parent,

brother, sister, or descendant of a brother or sister, uncle, aunt, or descendant of an uncle or aunt.[25] If the deceased leaves a widow the real estate is taken subject to her rights.[26] If the deceased leaves a husband, to whom a child was born alive, the real estate is taken subject to the husband's right of curtesy.[27]

Where third cousins are not excluded, as above, their ability to inherit is determined by the rules of the common law hereinbefore given,[28] unless the inheritance came to the intestate from a deceased husband or wife.[29]

§ 8. **Third Cousins take Personal Estate.**— Third cousins take no portion of the personal estate of a deceased, if such deceased leaves[30] any descendant, husband, widow, parent, grandparent, great-grandparent, great-great-grandparent, brother, sister, descendant of brother or sister, uncle, aunt, descendant of uncle or aunt, great-uncle or aunt, or descendant of great-uncle or aunt.[31]

Neither can they take if their parent (being a grandchild of a great-great-uncle or aunt), grand-

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25 R. P. Law, §§ 281–290.

26 For the rights of a widow, see Widow, p. 30, § 1.

27 See Husband, p. 35, § 3.

28 R. P. Law, § 291. See rules given under Great-uncles and Great-aunts, p. 98.

29 If so, it descends to the heirs of such husband or wife. R. P. Law, § 290a.

30 See notes under head of various relatives named.

31 Code, § 2732, subds. 5, 12. See note 38, p. 63.

parent (being a child of a great-great-uncle or aunt), or great-grandparent (being a great-great-uncle or aunt of deceased) be living.

Where third cousins are not excluded, as above, they take or share in the personal estate of the deceased, as follows:[32]

(1.) If the deceased leaves no great-great-uncle or aunt, child of a great-great-uncle or aunt, or grandchild of a great-great-uncle or aunt, third cousins take in equal portions; deceased third cousins, who have descendants living, being counted for the purpose of division as themselves living.

(2.) If the deceased leaves a grandchild of great-great-uncle or aunt but no great-great-uncle or aunt, or child of a great-great-uncle or aunt, third cousins, who are not excluded by living ancestors as above, take in equal portions (deceased grandchildren of great-great-uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living) the share their parent would have taken if living; which would be such portion as would come to their parent upon the equal division among the grandchildren of great-great-uncles and aunts; deceased grandchildren of great-great-uncles and aunts, who have descend-

[32] Code Civ. Pro. § 2732, subds. 5, 10, 12. See note 38, p. 63.

ants living, being counted for the purpose of division as themselves living.

(3.) If the deceased leaves a child of a great-great-uncle or aunt but no great-great-uncle or aunt, third cousins, who are not excluded by a living ancestor as above, take or share in by representation the portion their grandparent (a child of a great-great-uncle or aunt) would have taken if living; which would be such portion as would come to their grandparent upon the equal division among the children of the great-great-uncles and aunts; deceased great-great-uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.

(4.) If the deceased leaves a great-great-uncle or aunt, third cousins, who are not excluded by a living ancestor as above, take or share in by representation the portion their great-grandparent (a great-great-uncle or aunt of the deceased) would have taken if living; which would be such portion as would come to their great-grandparent upon the equal division among the great-great-uncles and aunts; deceased great-great-uncles and aunts, who have descendants living, being counted for the purpose of division as themselves living.

CHAPTER X.

OF THE POSSESSION AND ENJOYMENT OF THE PROPERTY TAKEN.

§ 1. **Real Estate.**— The title to real estate[1] vests, and the right to the possession and enjoyment of the same becomes fixed upon the death of the intestate. If, however, the personal property be insufficient, the real estate may be sold to pay the debts and funeral expenses of the deceased, except where the real estate is devised expressly charged with the payment of debts or funeral expenses, or is exempt from levy and sale by virtue of an execution.[2]

§ 2. **Possession and Inventory of Personal Estate.**— The executor or administrator, as the case may be,

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[1] As to what is real estate, see R. P. Law, § 280, given in Appendix A. As to what is personal estate, see Code, § 2712, given in a note to the next section of this chapter.

[2] Code Civ. Pro. § 2749.

is entitled to the exclusive possession of all the personal estate[3] of the deceased.

Within a reasonable time after qualifying, the executor or administrator is required to make, in duplicate, an inventory of the personal estate,[4] showing

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[3] As to what constitutes personal estate see next note.

[4] Code Civ. Pro. § 2712. [*Am'd* 1893.] The following shall be deemed assets and go to the executors or administrators, to be applied and distributed as part of the personal property of the testator or intestate, and be included in the inventory:

1. Leases for years; lands held by the deceased from year to year; and estates held by him for the life of another person.

2. The interest remaining in him, at the time of his death, in a term of years after the expiration of any estate for years therein granted by him or any other person.

3. The interest in lands devised to an executor for a term of years for the payment of debts.

4. Things annexed to the freehold, or to any building for the purpose of trade or manufacture, and not fixed into the wall of a house so as to be essential to its support.

5. The crops growing on the land of the deceased at the time of his death.

6. Every kind of produce raised annually by labor and cultivation, except growing grass and fruit ungathered.

7. Rent reserved to the deceased which had accrued at the time of his death.

8. Debts secured by mortgages, bonds, notes or bills; accounts, money, and bank bills, or other circulating medium, things in action, and stock in any corporation or joint-stock association.

9. Goods, wares, merchandise, utensils, furniture, cattle, provisions, moneys unpaid on contracts for the sale of lands and every other species of personal property not hereinafter ex-

the appraised value of the various items mentioned therein, except such as the law has set apart for the use of the widow and minor children.[5] One of such duplicates must be filed with the surrogate before the expiration of three months from the date of the letters granted to the executor or administrator.[6]

§ 3. **Payment for support and education.**— Where the payment or satisfaction of a legacy, pecuniary provision or distributive share, or some part thereof, is necessary for the support or education of a claimant, the surrogate in certain cases may, in his discretion, at any time after granting letters, direct payment or satisfaction accordingly, upon the filing of a bond, approved by him, conditioned to refund the money if, in justice to others, it should become necessary.[7] In order to entitle a claimant to such an advanced payment, the validity and legality of his claim must be undisputed by the executor or administrator. He must show to the satisfaction of the surrogate that

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cepted. Things annexed to the freehold, or to a building, shall not go to the executor, but shall descend with the freehold to the heirs or devisees, except such fixtures as are mentioned in the fourth subdivision of this section. The right of an heir to any property, not enumerated in this section, which by the common law would descend to him, is not impaired by the general terms of this section.

5 See Widow, Personal Estate, p. 32; Code, § 2713.

6 Code, § 2715.

7 Code Civ. Pro. § 2723.

there is money or other personal property of the estate, applicable to the payment or satisfaction of the claim, and which may be applied without injuriously affecting the rights of others entitled to priority or equality of payment or satisfaction.[8] He must also show that the amount of the money and the value of the other property in the hands of the executor or administrator, applicable to the payment of debts, legacies and expenses, exceed by at least one-third, the amount of all known debts and claims against the estate, of all legacies which are entitled to priority over the demands of the claimant, and of all legacies or distributive shares of the same class.[9]

§ 4. **Payment after one year.**—At any time after the expiration of one year from the granting of letters to an executor or administrator, persons entitled to share in the personal estate and legatees may apply to the surrogate for a decree directing the payment of their claims.[10] Upon such an application, if the validity or legality of the claim is not disputed by the executor or administrator, the claimant must prove to the satisfaction of the surrogate that there is money or other personal property of the estate applicable to the payment or satisfaction of the claim and which may be so applied without injuriously af-

8 Code Civ. Pro. § 2722.

9 Code Civ. Pro. § 2723.

10 Code Civ. Pro. § 2722.

fecting the rights of others entitled to priority or equality of payment or satisfaction. Thereupon the surrogate may, if justice requires, order the payment of the whole or such part of the claim as is proper under the circumstances.[11]

If, however, the executor or administrator disputes the validity and legality of the claim, the claimant is put to an action or an accounting.[12]

§ 5. **Payment after accounting.**—After the expiration of one year from the granting of letters, an executor or administrator, on the application of an interested person, may be compelled, in the discretion of the surrogate, to render an account of his proceedings for judicial settlement.[13] After the expiration of eighteen months from the granting of letters, the surrogate must issue a citation to an executor or administrator for an accounting and judicial settlement of his accounts on the proper application.[14] When an account is judicially settled and any part of the estate remains and is ready to be distributed, the decree must direct the payment and distribution thereof to the persons entitled thereto, according to their respective rights.[15]

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11 Id.

12 Id.

13 Code Civ. Pro. § 2726.

14 Code Civ. Pro. § 2727.

15 Code Civ. Pro. § 2743.

§ 6. **Recovery by action.**— If, after the expiration of one year from the granting of letters testamentary or letters of administration, an executor or administrator refuses, upon demand, to pay a legacy or distributive share, the person entitled thereto may maintain such action against him as the case requires.[16]

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16 Code Civ. Pro. § 1819.

APPENDIX A.

STATUTE OF DESCENT.

[NOTE.— The present statute of descent is Article IX of the Real Property Law, being chapter 547, Laws of 1896. It took effect October 1, 1896. This article takes the place of chapter II of part II of the New York Revised Statutes, 1 R. S. 751–755, which took effect January 1, 1830.]

ARTICLE IX.

THE DESCENT OF REAL PROPERTY.

§ 280. **Definitions and use of terms; effect of article.** — The term "real property" as used in this article, includes every estate, interest and right, legal and equitable in lands, tenements and hereditaments except such as are determined or extinguished by the death of an intestate seized or possessed thereof, or in any manner entitled thereto; leases for years, estates for the life of another person; and real property held in trust, not devised by the beneficiary. "Inheritance" means real property as herein defined, descended according to the provisions of this article; the expressions "where the inheritance shall have come to the intestate on the part of the father" or "mother," as the case may be, include every case where the inheritance shall have come to the intestate by devise, gift or descent from the parent referred to, or from any relative of the blood of such parent. When in this article a person is described as living, it means living at the time of the death of the intestate from whom the descent came; when he is described as having died, it means that he died before such intestate. This article does not affect a limitation of an estate by deed or will, or tenancy by the curtesy or dower.

§ 281. **General rule of descent.**— The real property of a person who dies without devising the same shall descend:

1. To his lineal descendants.
2. To his father.
3. To his mother; and
4. To his collateral relatives, as prescribed in the following sections of this article.

§ 282. **Lineal descendants of equal degree.**— If the intestate leave descendants in the direct line of lineal descent, all of equal degree of consanguinity to him, the inheritance shall descend to them in equal parts however remote from him the common degree of consanguinity may be.

§ 283. **Lineal descendants of unequal degree.**— If any of the descendants of such intestate be living, and any be dead, the inheritance shall descend to the living, and the descendants of the dead, so that each living descendant shall inherit such share as would have descended to him had all the descendants in the same degree of consanguinity who shall have died leaving issue been living; and so that issue of the descendants who shall have died shall respectively take the shares which their ancestors would have received.

§ 284. **When father inherits.**— If the intestate die without lawful descendants, and leave a father, the

inheritance shall go to such father, unless the inheritance came to the intestate on the part of his mother, and she be living; if she be dead, the inheritance descending on her part shall go to the father for life, and the reversion to the brothers and sisters of the intestate and their descendants, according to the law of inheritance by collateral relatives hereinafter provided; if there be no such brothers or sisters or their descendants living, such inheritance shall descend to the father in fee.

§ 285. **When mother inherits.**— If the intestate die without descendants and leave no father, or leave a father not entitled to take the inheritance under the last section, and leave a mother, and a brother or sister, or the descendant of a brother or sister, the inheritance shall descend to the mother for life, and the reversion to such brothers and sisters of the intestate as may be living, and the descendants of such as may be dead, according to the same law of inheritance hereinafter provided. If the intestate in such case leave no brother or sister or descendant thereof, the inheritance shall descend to the mother in fee.

§ 286. **When collateral relatives inherit; collateral relatives of equal degrees.**— If there be no father or mother capable of inheriting the estate, it shall descend in the cases hereinafter specified to the collateral relatives of the intestate; and if there be several such relatives, all of equal degree of consan-

guinity to the intestate, the inheritance shall descend to them in equal parts, however remote from him the common degree of consanguinity may be.

§ 287. **Brothers and sisters and their descendants.** — If all the brothers and sisters of the intestate be living, the inheritance shall descend to them; if any of them be living and any be dead, to the brothers and sisters living, and the descendants, in whatever degree, of those dead; so that each living brother or sister shall inherit such share as would have descended to him or her if all the brothers and sisters of the intestate who shall have died, leaving issue, had been living, and so that such descendants in whatever degree shall collectively inherit the share which their parents would have received if living; and the same rule shall prevail as to all direct lineal descendants of every brother and sister of the intestate whenever such descendants are of unequal degrees.

§ 288. **Brothers and sisters of father and mother and their descendants.**— If there be no heir entitled to take, under either of the preceding sections, the inheritance, if it shall have come to the intestate on the part of his father, shall descend:

1. To the brothers and sisters of the father of the intestate in equal shares, if all be living.

2. If any be living, and any shall have died, leaving issue, to such brothers and sisters as shall be living and to the descendants of such as shall have died.

3. If all such brothers and sisters shall have died, to their descendants.

4. If there be no such brothers or sisters of such father, nor any descendants of such brothers or sisters, to the brothers and sisters of the mother of the intestate, and to the descendants of such as shall have died, or if all have died, to their descendants. But, if the inheritance shall have come to the intestate on the part of his mother, it shall descend to her brothers and sisters and their descendants; and if there be none, to the brothers and sisters of the father and their descendants, in the manner aforesaid. If the inheritance has not come to the intestate on the part of either father or mother, it shall descend to the brothers and sisters both of the father and mother of the intestate, and their descendants in the same manner. In all cases mentioned in this section the inheritance shall descend to the brothers and sisters of the intestate's father or mother, as the case may be, or to their descendants in like manner as if they had been the brothers and sisters of the intestate.

§ 289. **Illegitimate children.**— If an intestate who shall have been illegitimate die without lawful issue, or illegitimate issue entitled to take, under this section, the inheritance shall descend to his mother; if she be dead, to his relatives on her part, as if he had been legitimate. If a woman die without lawful is-

To face page 130 Remsen on Intestate Succession, 4th Edition.

Grandparents take Real Estate.— By an Act (L. 1904, ch. 106) which was passed and took effect after this book was printed, March 22, 1904, a new subdivision was added to § 288 of Real Property Law, whereby grandparents are now enabled to inherit real estate. That subdivision reads as follows:

§ 288, subd. "5. If there be no such brothers or sisters of such father or mother, nor any descendants of such brothers or sisters, the inheritance, if it shall have come to the intestate on the part of his father, shall descend to his father's parents, then living, in equal parts, and if they be dead, then to his mother's parents, then living, in equal parts; but if the inheritance shall have come to the intestate on the part of his mother, it shall descend to his mother's parents, then living, in equal parts, and if they be dead, to his father's parents, then living, in equal parts. If the inheritance has not come to the intestate on the part of either father or mother, it shall descend to his living grandparents in equal parts."

By the foregoing amendment a living grandparent excludes great-uncles and aunts, children of great-uncles and aunts, second cousins, children of second cousins, great-great uncles and aunts, children of great-great uncles and aunts, grandchildren of great-great uncles and aunts and third cousins.

sue, leaving an illegitimate child, the inheritance shall descend to him as if he were legitimate. In any other case illegitimate children or relatives shall not inherit.

§ 290. **Relatives of the half-blood.**— Relatives of the half-blood and their descendants, shall inherit equally with those of the whole blood and their descendants, in the same degree, unless the inheritance came to the intestate by descent, devise or gift from an ancestor; in which case all those who are not of the blood of such ancestor shall be excluded from such inheritance.

§ 290a. **Relatives of husband or wife.**— When the inheritance shall have come to the intestate from a deceased husband or wife, as the case may be, and there be no person entitled to inherit under any of the preceding sections, then such real property of such intestate shall descend to the heirs of such deceased husband or wife, as the case may be, and the persons entitled, under the provisions of this section, to inherit such real property, shall be deemed to be the heirs of such intestate. (*Added by ch.* 481 *of L.* 1901.)

§ 291. **Cases not hereinbefore provided for.**— In all cases not provided for by the preceding sections of this article, the inheritance shall descend according to the course of the common law.

§ 292. **Posthumous children and relatives.**—A descendant or a relative of the intestate begotten before his death, but born thereafter, shall inherit in the same manner as if he had been born in the lifetime of the intestate and had survived him.

§ 293. **Inheritance, sole or in common.**—When there is but one person entitled to inherit, he shall take and hold the inheritance solely; when an inheritance or a share of an inheritance descends to several persons they shall take as tenants in common, in proportion to their respective rights.

§ 294. **Alienism of ancestor.**—A person capable of inheriting under the provisions of this article, shall not be precluded from such inheritance by reason of the alienism of an ancestor.

§ 295. **Advancements.**—If a child of an intestate shall have been advanced by him, by settlement or portion, real or personal property, the value thereof must be reckoned for the purposes of descent and distribution as part of the real and personal property of the intestate descendible to his heirs and to be distributed to his next of kin; and if such advancement be equal to or greater than the amount of the share which such child would be entitled to receive of the estate of the deceased, such child and his descendants shall not share in the estate of the intestate; but if it be less than such share, such child and his descendants

shall receive so much, only, of the personal property, and inherit so much only, of the real property, of the intestate, as shall be sufficient to make all the shares of all the children in the whole property, including the advancement, equal. The value of any real or personal property so advanced, shall be deemed to be that, if any, which was acknowledged by the child by an instrument in writing; otherwise it must be estimated according to the worth of the property when given. Maintaining or educating a child, or giving him money without a view to a portion or settlement in life is not an advancement. An estate or interest given by a parent to a descendant by virtue of a beneficial power, or of a power in trust, with a right of selection, is an advancement.

§ 296. **How advancements adjusted.**— When an advancement to be adjusted consisted of real property, the adjustment must be made out of the real property descendible to the heirs. When it consisted of personal property, the adjustment must be made out of the surplus of the personal property to be distributed to the next of kin. If either species of property is insufficient to enable the adjustment to be fully made, the deficiency must be adjusted out of the other.

APPENDIX B.

STATUTE OF DISTRIBUTION.

[NOTE.— The "Statute of Distribution," so-called, was a portion of Article 2, Title III, Chapter VI, Part II, of the New York Revised Statutes, and was cited as 2 R. S. 96–98, the pages being those of the original and only official edition. This portion of the Revised Statutes took effect January 1, 1830, and remained unaltered, except as to the last section given below, until the passage of L. 1893, ch. 686, which took effect May 31st of that year. By that act the statute was slightly changed in form, and it became a part of the Code of Civil Procedure, §§ 2732–2734.]

§ 2732. [*Am'd* 1893.] If the deceased died intestate, the surplus of his personal property after payment of debts; and if he left a will, such surplus, after the payment of debts and legacies if not bequeathed, must be distributed to his widow, children, or next of kin, in manner following:

1. One-third part to the widow, and the residue in equal portions among the children, and such persons as legally represent the children if any of them have died before the deceased.

2. If there be no children, nor any legal representatives of them, then one-half of the whole surplus shall be allotted to the widow, and the other half

distributed to the next of kin of the deceased, entitled under the provisions of this section.

3. If the deceased leaves a widow, and no descendant, parent, brother or sister, nephew or niece, the widow shall be entitled to the whole surplus; but if there be a brother or sister, nephew or niece, and no descendant or parent, the widow shall be entitled to one-half of the surplus as above provided, and to the whole of the residue if it does not exceed two thousand dollars; if the residue exceeds that sum, she shall receive in addition to the one-half, two thousand dollars; and the remainder shall be distributed to the brothers and sisters and their representatives.

4. If there be no widow, the whole surplus shall be distributed equally to and among the children, and such as legally represent them.

5. If there be no widow, and no children, and no representatives of a child, the whole surplus shall be distributed to the next of kin, in equal degree to the deceased, and their legal representatives; and if all the brothers and sisters of the intestate be living, the whole surplus shall be distributed to them; if any of them be living and any be dead, to the brothers and sisters living, and the descendants in whatever degree of those dead; so that to each living brother or sister shall be distributed such share as would have been distributed to him or her if all the brothers and sisters of the intestate who shall have died leaving issue had been living, and so that there shall be distributed to

such descendants in whatever degree, collectively, the share which their parent would have received if living; and the same rule shall prevail as to all direct lineal descendants of every brother and sister of the intestate whenever such descendants are of unequal degrees. [*As am'd, L.* 1903, *ch.* 367; *took effect Sept.* 1, 1903.]

6. If the deceased leave no children and no representatives of them, and no father, and leave a widow and a mother, the half not distributed to the widow shall be distributed in equal shares to his mother and brothers and sisters, or the representatives of such brothers and sisters; and if there be no widow, the whole surplus shall be distributed in like manner to the mother, and to the brothers and sisters, or the representatives of such brothers and sisters.

7. If the deceased leave a father and no child or descendant, the father shall take one-half if there be a widow, and the whole, if there be no widow.

8. If the deceased leave a mother and no child, descendant, father, brother, sister, or representative of a brother or sister, the mother, if there be a widow, shall take one-half; and the whole, if there be no widow.

9. If the deceased was illegitimate and leave a mother, and no child, or descendant, or widow, such mother shall take the whole and shall be entitled to letters of administration in exclusion of all other persons. If the mother of such deceased be dead, the

relatives of the deceased on the part of the mother shall take in the same manner as if the deceased had been legitimate, and be entitled to letters of administration in the same order.

10. Where the descendants, or next of kin of the deceased, entitled to share in his estate, are all in equal degree to the deceased, their shares shall be equal.

11. When such descendants or next of kin are of unequal degrees of kindred, the surplus shall be apportioned among those entitled thereto, according to their respective stocks; so that those who take in their own right shall receive equal shares, and those who take by representation shall receive the share to which the parent whom they represent, if living, would have been entitled.

12. Representation shall be admitted among collaterals in the same manner as allowed by law in reference to real estate. [*As am'd. L.* 1898, *ch.* 319; *amendment took effect Sept.* 1, 1898.]

13. Relatives of the half blood, shall take equally with those of the whole blood in the same degree; and the representatives of such relatives shall take in the same manner as the representatives of the whole blood.

14. Descendants and next of kin of the deceased, begotten before his death, but born thereafter, shall take in the same manner as if they had been born in the lifetime of the deceased, and had survived him.

15. If a woman die, leaving illegitimate children,

and no lawful issue, such children inherit her personal property as if legitimate. [*New. L.* 1897, *ch.* 37.]

16. If there be no husband or wife surviving and no children, and no representatives of a child, and no next of kin, then the whole surplus shall be distributed equally to and among the next of kin of the husband or wife of the deceased, as the case may be, and such next of kin shall be deemed next of kin of the deceased for all the purposes specified in this chapter; but such surplus shall not, and shall not be construed to, embrace any personal property except such as was received by the deceased from such husband or wife, as the case may be, by will or by virtue of the laws relating to the distribution of personal property of the deceased person. [*New. L.* 1901, *ch.* 410; *took effect Sept.* 1, 1901.]

§ 2733. [*Am'd* 1893.] If any child of such deceased person have been advanced by the deceased, by settlement or portion of real or personal property, the value thereof shall be reckoned with that part of the surplus of the personal property, which remains to be distributed among the children; and if such advancement be equal or superior to the amount, which, according to the preceding section, would be distributed to such child, as his share of such surplus and advancement, such child and his descendants, shall be excluded from any share in the distribution of such surplus. If such advancement be not equal to such amount, such child or his descendants shall be

entitled to receive so much only, as is sufficient to make all the shares of all the children, in such surplus and advancement, to be equal, as near as can be estimated. The maintaining or educating, or the giving of money to a child, without a view to a portion or settlement in life, shall not be deemed an advancement, within the meaning of this section, nor shall the foregoing provisions of this section apply in any case where there is any real property of the intestate to descend to his heirs. Where there is a surplus of personal property to be distributed, and the advancement consisted of personal property, or where a deficiency in the adjustment of an advancement of real property is chargeable on personal property, the decree for distribution, in the surrogate's court, must adjust all the advancements which have not been previously adjusted by the judgment of a court of competent jurisdiction. For that purpose, if any person to be affected by the decree, is not a party to the proceeding, the surrogate must cause him to be brought in by a supplemental citation.

§ 2734. [*Am'd* 1893.] The provisions of this article respecting the distribution of property of deceased persons apply to the personal property of married women dying, leaving descendants them surviving. The husband of any such deceased married woman shall be entitled to the same distributive share in the personal property of his wife to which a widow is entitled in the personal property of her husband by the provisions of this article and no more.

INDEX.